TEXAS REGISTER

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Sergio Ledesma

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Requests for Opinions

RQ-1101-GA

Requestor:

Mr. David Slayton

Administrative Director

Office of Court Administration

205 West 14th Street, Suite 600

Austin, Texas 78711

Re: Questions regarding Transportation Code section 502.010, the county scofflaw statute, and the reconciliation of SB 1386 and HB 2357 from the 82nd Legislature (RQ-1101-GA

Briefs requested by January 7, 2013

RQ-1102-GA

Requestor:

The Honorable Robert Henneke

Kerr County Attorney

700 Main Street, Suite BA-103

Kerrville, Texas 78028

Re: Whether a governmental entity may use Penal Code section 30.05, the criminal trespass statute, to forbid a person's future entry upon property open to the public and owned by the governmental entity (RQ-1102-GA)

Briefs requested by January 9, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201206362
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 11, 2012

♦ ♦ ♦

Opinions

Opinion No. GA-0980

The Honorable Rene O. Oliveira

Chair, Committee on Land and Resource Management

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a "project duration ordinance" adopted by the City of Austin contravenes section 245.005 of the Local Government Code (RQ-1070-GA)

S U M M A R Y

A court would likely conclude that the Ordinance provisions about which you ask are void because they conflict with chapter 245 of the Local Government Code.

Opinion No. GA-0981

The Honorable Joseph C. Pickett

Chair, Committee on Defense and Veterans' Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a county to form a transportation reinvestment zone, collect an ad valorem tax increment, and pledge and assign all or part of the increment to secure bonds to pay the cost of a transportation project (RQ-1071-GA)

S U M M A R Y

A county's issuance of tax increment financing bonds secured by a pledge of the county's ad valorem tax increment would be subject to constitutional challenge as violating the equal and uniform taxation requirements of article VIII, section 1(a) of the Texas Constitution.

Opinion No. GA-0982

The Honorable Tom Maness

Jefferson County Criminal District Attorney

1001 Pearl Street, 3rd floor

Beaumont, Texas 77701

Re: Whether a senior status federal judge who has been designated and assigned to hold court in Texas is authorized to conduct a marriage ceremony in Texas (RQ-1079-GA)

S U M M A R Y

A senior status federal judge meeting the requirements of 28 U.S.C.A. § 371 is authorized to conduct a marriage ceremony in Texas.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201206401

Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 12, 2012

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-576. The Texas Ethics Commission has been asked to consider whether a general-purpose committee may use text messaging to solicit and accept political contributions.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) §2152.064, Government Code; and (11) §2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201206409
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: December 12, 2012

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.622

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of new §§19.615 - 19.622, for a 60-day period. The text of the new sections was originally published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6827).

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206267
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Original effective date: August 14, 2012
Expiration Date: February 9, 2013
For further information, please call: (512) 463-4075

♦ ♦ ♦

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. **[~~Square brackets and strikethrough~~]** indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7001, concerning Telemedicine Services Reimbursement.

Background and Justification

The current rule allows reimbursement to physicians for telemedicine services provided to Medicaid clients. The proposed amendment would allow reimbursement to additional health care professionals for telemedicine and telehealth services. Additionally, the title of Subchapter G is being changed from "Telemedicine and Other Community-Based Services" to "Advanced Telecommunications Services and Other Community-Based Services" and the title of §355.7001 is being changed from "Telemedicine Services Reimbursement" to "Reimbursement Methodology for Telemedicine and Telehealth Services."

The amendment is proposed to align the reimbursement methodology rule with proposed amendments to HHSC rules concerning the telemedicine and telehealth program in Chapter 354, Subchapter A, Division 33, Advanced Telecommunications Services, §354.1430, Definitions, and §354.1432, Telemedicine and Telehealth Benefits and Limitations. The amendments to the program rules, as required under Senate Bill (SB) 293, 82nd Legislature, Regular Session 2011, were published in the November 16, 2012, issue of the *Texas Register* (37 TexReg 9057).

Section-by-Section Summary

HHSC proposes amendments to §355.7001 as follows:

Change the title of Subchapter G from "Telemedicine Services and Other Community-Based Services" to "Advanced Telecommunication Services and Other Community-Based Services."

Change the title of §355.7001 from "Telemedicine Services Reimbursement" to "Reimbursement Methodology for Telemedicine and Telehealth Services."

Replace the current rule language in subsection (a) with an introductory sentence that references the definition of eligible providers for telemedicine and telehealth services.

Replace the current rule language in subsection (b) with a description of the reimbursement methodologies for telemedicine distant site professionals.

Add a new subsection (c), which describes the reimbursement methodologies for telehealth distant site professionals.

Add a new subsection (d), which describes the reimbursement methodology for telemedicine and telehealth patient site locations.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be a fiscal impact to the state government of $523 for state fiscal year (SFY) 2013, $805 for SFY 2014, $833 for SFY 2015, $865 for SFY 2016, and $895 for SFY 2017. There are two components to payments for advanced telecommunications services: reimbursements for the distant site professional (the doctor or other health care professional providing the service) and reimbursements for the patient site location (facility fees). While it is expected that the reimbursement for newly eligible distant site professionals will largely be offset by a corresponding decrease in billed in-person visits, as the list of reimbursable telecommunications services is expanded, the number of billed facility fees will increase with no corresponding offset to current expenses. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Pam McDonald, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed amendment. While there could be a reduction of reimbursements to some local practitioners and increased reimbursements to distance practitioners, the amount of such reimbursements is expected to be small. HHSC does not anticipate that there will be any economic cost to persons who are required to comply with the proposed amendment, since providing telemedicine and telehealth services is voluntary. There is no anticipated negative impact on local employment.

Public Benefit

Ms. McDonald has also determined that, for each year of the first five years the proposed amendment is in effect, the public will benefit from the adoption of this rule through improved access to medical care.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government

Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her private real property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Comments

Written comments on the proposal may be submitted to Reuben Leslie, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail at reuben.leslie@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements; and §531.0216, which requires HHSC to adopt rules to develop and implement a system to reimburse providers of services under the state Medicaid program for services performed using telemedicine or telehealth services.

§355.7001. [~~Telemedicine Services~~] Reimbursement Methodology for Telemedicine and Telehealth Services.

(a) Eligible providers performing either telemedicine medical services or telehealth services are defined in §354.1430 of this title (relating to Definitions) and §354.1432 of this title (relating to Telemedicine and Telehealth Benefits and Limitations). [~~Physicians as telemedicine distant site providers, as defined in §354.1430(2) of this title (relating to Definitions), are reimbursed for their Medicaid telemedicine professional services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners).~~]

(b) The Health and Human Services Commission (HHSC) reimburses eligible distant site professionals providing telemedicine medical services as follows: [~~Telemedicine patient site locations, as defined in §354.1430(5) of this title, are reimbursed a facility fee determined by the Health and Human Services Commission.~~]

(1) Physicians are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Physician assistants are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8093 of this title (relating to Physician Assistants).

(3) Advanced practice nurses are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8281 of this title (relating to Reimbursement Methodology).

(4) Certified nurse midwives are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8161 of this title (relating to Reimbursement Methodology for Midwife Services).

(c) HHSC reimburses eligible distant site professionals providing telehealth services as follows:

(1) Licensed professional counselors (including licensed marriage and family therapists) and licensed clinical social workers (including Comprehensive Care Program social workers) are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Master Social Worker-Advanced Clinical Practitioners, and Licensed Marriage and Family Therapists).

(2) Licensed psychologists (including licensed psychological associates) and psychology groups are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8081 of this title (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Maternity Clinic Services, and Tuberculosis Clinic Services).

(3) Durable medical equipment suppliers are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8021 of this title (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(d) Telemedicine and telehealth patient site locations, as defined in §354.1430 and §354.1432 of this title, are reimbursed a facility fee determined by HHSC.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206310
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER T. NOXIOUS AND INVASIVE PLANTS

4 TAC §19.300

The Texas Department of Agriculture (the department) proposes to amend §19.300(a), concerning the Noxious and Invasive Plant List. Amendments to §19.300(a) are necessary to add species to the list that have serious potential to cause economic or ecological harm to the state.

The department has consulted with representatives from the agriculture industry, the horticulture industry, the Texas Cooperative Extension Service, the Texas Department of Transportation, the State Soil and Water Conservation Board, and the Texas Department of Parks and Wildlife before adding the *Melia azedarach* (chinaberry) to the list. The department has considered scientific data and the economic impact submitted by the Texas Invasive Plant and Pest Council, affiliated with the National Association of Exotic Pest Plant Councils. By law, the noxious and invasive plants listed may not be sold, distributed or imported in Texas. The amendments to the list of noxious and invasive plants add chinaberry as an invasive plant, correct the spelling of chinese tallow tree, and move the listing of japanese climbing fern to place it in alphabetical order.

Dr. David T. Villarreal, Environmental Quality Specialist for the Environmental and Biosecurity Program of the department, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local governments as a result of administering or enforcing the amendments, as proposed.

Dr. Villarreal also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended section will be the minimizing of the spread of the invasive species *Melia azedarach* (chinaberry). There are no anticipated costs to individuals, microbusinesses, or small businesses required to comply with the amendments.

Comments on the proposal may be submitted to Dr. David T. Villarreal, Environmental Quality Specialist, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or via email to David.Villarreal@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §19.300(a) are proposed under the Texas Agriculture Code, §71.151, which authorizes the department to publish by rule a list of noxious and invasive plant species that have serious potential to cause economic or ecological harm to the state.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapter 71.

§19.300. Noxious and Invasive Plant List.

(a) The following plants have serious potential to cause economic or ecological harm to the state.
Figure: 4 TAC §19.300(a)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206306
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.12

The Texas Alcoholic Beverage Commission (commission) proposes new §31.12, concerning Training and Education of Commission Employees. This rule is required by Government Code §656.048, Rules Relating to Training and Education, and by Government Code §656.102, Agency Policy.

Government Code §656.048 requires state agencies to adopt rules relating to: (1) the eligibility of the agency's administrators and employees for training and education supported by the agency; and (2) the obligations assumed by the administrators and employees receiving the training and education. The commission understands "administrators and employees" as used in Government Code §§656.041 - 656.104 to include everyone employed by the commission, including both supervisory and non-supervisory personnel, and uses the term "employee" to include both supervisory and non-supervisory personnel.

Government Code §656.044 provides that a state agency may use public funds to provide training and education for its administrators and employees if the training or education is related to the duties or prospective duties of the administrator or employee. Government Code §656.045 provides that a state agency may require an administrator or employee to attend a training or education program. Government Code §656.047 provides that a state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials and other necessary expenses of an instructor, student or other participant in a training or education program. Government Code §656.102 provides that a state agency must adopt a policy governing the training of employees as well as the rules required by Government Code §656.048.

Government Code §656.103 and §656.104 establish certain obligations for an employee receiving training and liability for costs if those obligations are not met.

This new section provides that state funds may be used by the commission for the education and training of its employees in accordance with Government Code §§656.041 - 656.104. It establishes certain restrictions on training and education that may be funded by the commission, addresses supervisory approval to receive the education and training, and clarifies that such education and training does not affect the at-will status of the employee.

Loretta Doty, Director of the Human Resources Division, has determined that for each year of the first five years the new rule will be in effect there will be no fiscal impact on state or local government. The public funds that are available for the education and training of commission employees are already appropriated by the legislature and the rule merely authorizes those funds to be spent. The decision to spend those funds to provide education or training to any employee is an independent decision based on the particular circumstances relating to that employee and is guided by the commission's internal policies (which are required by Government Code §656.102).

Ms. Doty has also determined that for each year of the first five years the proposed new rule will be in effect, the public will benefit because, as the legislature has determined in Government Code §656.042, "programs for the training and education of state administrators and employees materially aid effective state administration." The proposed new rule will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Comments on the proposed new rule may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127 or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at http://www.tabc.state.tx.us/laws/proposed_rules.asp. Comments received within 30 days following publication in the *Texas Register* will be considered and addressed in the preamble to the adopted rule pursuant to Government Code §2001.033, if the commission decides to adopt a rule in this proceeding.

If you wish to make oral comments on the proposed new rule and if you wish to assure that the commission will respond to them formally under Government Code §2001.033, please contact Martin Wilson, Assistant General Counsel, at (512) 206-3489. If possible, please contact Mr. Wilson by e-mail (at martin.wilson@tabc.state.tx.us) to schedule a mutually convenient time for him to receive your oral comments. The commission's response to oral comments received by Mr. Wilson will be in the preamble to the adopted new rule, if the commission chooses to adopt a rule in this proceeding.

The proposed new rule is authorized by Government Code §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's employees for training and education supported by the agency and the obligations assumed by those employees receiving the training and education. The proposed new rule is also authorized by Alcoholic Beverage Code §5.31, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

The proposed new rule affects Government Code §§656.041 - 656.104 and Alcoholic Beverage Code §5.31.

§31.12. Training and Education of Commission Employees.

(a) The commission may use state funds in accordance with Government Code §§656.041 - 656.104 to provide training and education for its employees.

(b) Training or education provided pursuant to subsection (a) of this section shall be related to the employee's current position or prospective job duties within the commission.

(c) Commission employees may be required to complete training and/or education programs related to the employee's current or prospective job duties as a condition of employment.

(d) Participation in training or education programs requires the approval of the employee's supervisors prior to participation and is subject to the availability of funds in the commission's budget.

(e) The employee training and education program for the commission may include:

(1) mandatory agency-sponsored training or education required for all employees;

(2) training or education relating to technical or professional certifications and licenses;

(3) training and education designed to promote employee development;

(4) employee-funded external education;

(5) commission-funded external education;

(6) a tuition-reimbursement program; and

(7) such other training or education determined by the commission to be of benefit to the employee and the commission, and to promote effective state administration pursuant to Government Code §656.042.

(f) Approval to participate in any portion of the commission's training and education program shall not in any way: affect an employee's at-will employment status; constitute a guarantee or indication of continued employment; or constitute a guarantee or indication of future employment in a current or prospective position.

(g) Approval to participate in any training or education program may be withdrawn if the commission determines, in its sole discretion, that participation would negatively affect the employee's job duties or performance.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206334
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 906-5748

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 73. LICENSES AND RENEWALS

22 TAC §73.7

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.7, relating to Approved Continuing Education Courses, to clarify continuing education course applications and criteria for approval.

First, the Board proposes adding a requirement that all applicants must submit a syllabus broken down into clearly designated hourly segments. Each segment must provide detailed information sufficient to inform the Board of the course material being taught. This allows Board staff to approve courses in part if necessary.

Additionally, the Board proposes an additional criteria for approval requiring the subject matter to either relate to the chiropractic scope of practice or to knowledge necessary for a licensee to comply with 22 TAC §75.2(a)(1)(F), relating to Proper Diligence and Efficient Practice of Chiropractic. The Board feels that continuing education courses should not be approved for subject matter not related to either of these two areas. This will assist the Board in regulating the practice of chiropractic.

Finally, the Board proposes some grammatical and stylistic changes to the rule to make it more reader-friendly.

Ms. Yvette Yarbrough, Executive Director of the Texas Board of Chiropractic Examiners, has determined that, for each year of the first five years this amendment will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years this amendment will be in effect, the public benefit of this amendment will be more clarity in the chiropractic continuing education course approval process. Ms. Yarbrough has determined that there will be no adverse economic effect to individuals and small or micro business during the first five years this amendment will be in effect.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe Street, Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, relating to rules, and §201.356, relating to continuing education. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.356 authorizes the Board to require license holders to attend continuing education courses specified by the Board.

No other statutes, articles, or codes are affected by the proposed amendment.

§73.7. Approved Continuing Education Courses.

(a) Approved sponsors. The board will approve courses sponsored only by a chiropractic college fully credited through the Council on Chiropractic Education or a statewide, national or international professional association, upon application to the board on a form prescribed by the board. Application forms are available from the board.

(b) Application. A separate application must be submitted for each course.

(1) The application shall be on a form provided by the board. The application form [~~and~~] must include the course title, subject and description, the number of requested credit hours, the date, time and location of the course, [~~and the names and backgrounds of speakers or instructors,~~] the method of instruction, the name, address and telephone number of the course coordinator, and the signature of an authorized representative of the sponsor. [~~Each continuing education course shall be approved for one calendar year only. The number of hours of credit to be earned at a course may not be changed after an application has been submitted to the board.~~]

(2) In addition to the application form, a detailed hour-by-hour syllabus of the course shall be submitted to the board. The syllabus must provide detailed information sufficient to inform the board of the course material being taught in each hour block. If the course is taught by more than one instructor, the syllabus must also list the name of the instructor of each hour block.

(3) Finally, the curriculum vitae of each instructor shall be submitted to the board.

(c) Application deadline and fee. A sponsor may submit an application no later than 60 days prior to the date of the course, along with a nonrefundable application fee as set by the board for each course. For the purpose of this subsection, where the same course is held in multiple cities or towns, with different speakers, each location is considered a separate course. If a continuing education program consists of separate sessions or modules, on different topics and on different dates, each session or module is considered a separate course.

(d) A sponsor shall certify on the application that:

(1) all courses [~~course~~] offered by the sponsor for which board approval is requested will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each course and will provide a certificate of attendance as set forth in subsection (j) [~~(i)~~] of this section.

(e) Approval. The board will notify, in writing, a sponsor of approval. Approval of each continuing education course is valid for one calendar year only.

(f) [~~(e)~~] Rejection. The board will notify, in writing, a sponsor of any rejection and the basis for the rejection.

(g) [~~(f)~~] Approved list of courses. The board will maintain a list of approved courses on their website at www.tbce.state.tx.us for compliance with §73.3 of this title (relating to Continuing Education).

(h) [~~(g)~~] Criteria for continuing education courses. In order for the board to approve a course, the course must:

(1) be presented by one or more speakers or instructors who demonstrate, through a curriculum vitae or resume, knowledge, training and expertise in the topic to be covered;

(2) have significant educational or practical content to maintain appropriate levels of competency; [~~and~~]

(3) relate to the chiropractic scope of practice, as defined by the Texas Occupations Code §201.002, and §75.17 of this title (relating to Scope of Practice), or to knowledge necessary for a licensee to comply with §75.2(a)(1)(F) of this title (relating to Proper Diligence and Efficient Practice of Chiropractic); and

(4) [~~(3)~~] be on a topic from one or more of the following categories:

(A) general or spinal anatomy;

(B) neuro-muscular-skeletal diagnosis;

(C) radiology or radiographic interpretation;

(D) pathology;

(E) public health;

(F) chiropractic adjusting techniques;

(G) chiropractic philosophy;

(H) risk management;

(I) physiology;

(J) microbiology;

(K) hygiene and sanitation;

(L) biochemistry;

(M) neurology;

(N) orthopedics;

(O) jurisprudence;

(P) nutrition;

(Q) adjunctive or supportive therapy;

(R) boundary (sexual) issues;

(S) insurance reporting procedures;

(T) chiropractic research;

(U) HIV prevention and education;

(V) chiropractic acupuncture;

(W) ethics;

(X) recordkeeping, documentation, and coding; or

(Y) other public health issues identified by the board as provided under §73.3(b)(2)(A)(iv) of this title.

(i) [~~(h)~~] The board will not approve any course on practice management or accept credit for such course in satisfaction of the board's continuing education requirement for licensees.

(j) [~~(i)~~] Sponsor responsibilities. A sponsor of an approved course shall:

(1) notify the board in writing prior to any change in course location, date, or cancellation;

(2) provide a roster of participants who attend the course which contains, at a minimum, each participant's name and current license number if a chiropractor, course number, and number of hours earned by each participant. This roster shall be submitted to the Board no later than 30 days after course completion;

(3) provide each participant in a course with a certificate of attendance. The certificate shall contain the name of the sponsor, the name of the participant, the title of the course, the date and place of the course, the amount and type of credit earned, the course number and the signature of the sponsor's authorized representative;

(4) assure that no licensee receives continuing education credit for time not actually spent attending the course. If any participant's absence exceeds ten minutes during any one hour period, credit for that hour shall be forfeited and noted in the sponsor's attendance roster that is submitted to the Board. Furthermore, the sponsor is responsible for seeing that each person in attendance is in place at the start of each course period;

(5) provide the activity rosters and any other additional information about a course to the board upon request;

(6) shall use the course title listed on the sponsor's application, and approved by the board, to advertise the course; and

(7) retain for a period of three years, for each approved course, documentation of compliance with this section, including:

(A) the curriculum presented;

(B) the names and vitae for each speaker;

(C) the attendance roles; and

(D) credit hours earned.

(k) [~~(j)~~] The board may evaluate an approved sponsor or course at any time to ensure compliance with the requirement of this section. Upon the failure of a sponsor or course to comply with the requirements of this section, the board, at its discretion, may revoke the sponsor or the course's approved status.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206279
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 305-6716

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES

25 TAC §61.34, §61.41

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §61.34 and §61.41, concerning breast and cervical cancer services.

BACKGROUND AND PURPOSE

The amendments and consideration by the department of the sections for re-adoption without change implement the federal Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101 - 534, and its reauthorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105 - 340, which establish a program of grants to states, territories, and tribal organizations for early detection and prevention of mortality from breast and cervical cancer. The department, through a cooperative agreement with the Centers for Disease Control and Prevention, provides statewide access to high-quality breast and cervical cancer screening and diagnostic services for financially eligible Texas women who are unable to access the same care through other funding sources or programs. The primary purpose of the Breast and Cervical Cancer Service is to reduce mortality from breast and cervical cancer. Amendments to the rules are necessary to reflect current program policy due to updates in clinical guidelines and to increase flexibility in allowable billing for administrative and support services according to program policy.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, and 61.42 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed; however, §§61.31 - 61.33, 61.36, 61.37, 61.39, and 61.42 are being re-adopted without changes.

SECTION-BY-SECTION SUMMARY

Amendments to §61.34 revise language to clarify client age eligibility requirements for breast and cervical cancer screening and diagnostic services.

Amendments to §61.41 remove allowable billing for administrative and support services to reflect current program policy.

FISCAL NOTE

David Auzenne, Manager, Preventive Care Branch, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed. The proposed rules do not change current program structure and implementation. These amendments are intended to clarify, update, and streamline the rules and are not anticipated to be controversial.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Auzenne has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses participate in, or are affected by, the Breast and Cervical Cancer Services.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Auzenne has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be continued access to breast and cervical cancer screening and diagnostic services for eligible, low-income Texas women.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to David Auzenne, Mail Code 1923, Community Health Services Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347 or by email to david.auzenne@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§61.34. Client Eligibility Requirements.

(a) In order for a woman to be [~~financially~~] eligible for Breast and Cervical Cancer Services, the woman must:

(1) - (2) (No change.)

(b) A woman age 40 or older that meets [~~financial~~] eligibility criteria is eligible for breast cancer screening and diagnostic services. A woman under age 40 that meets [~~financial~~] eligibility criteria is eligible for breast cancer diagnostic services only.

(c) A woman age 21 - 64 [~~18 or older~~] that meets [~~financial~~] eligibility criteria is eligible for cervical cancer screening [~~and/or diagnostic~~] services. A woman age 18 - 64 that meets eligibility criteria is eligible for cervical cancer diagnostic services only.

§61.41. Payment for Services.

(a) - (b) (No change.)

[~~(c) In accordance with department policy, providers may be allowed to bill for administrative and support services costs associated with the following activities:~~]

[~~(1) eligibility determination;~~]

[~~(2) public education and outreach;~~]

[~~(3) professional education;~~]

[~~(4) program management;~~]

[~~(5) coalition and partnership development;~~]

[~~(6) data collection and reporting; and~~]

[~~(7) other activities authorized in advance.~~]

[~~(d) In order to bill for administrative and support services costs, a provider must request such funding in its annual proposed budget. Administrative and support services costs shall not exceed 10% of a provider's actual expenditures for clinical services.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206305
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 776-6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING
SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.24

The General Land Office (GLO) proposes amendments to 31 TAC §15.24, relating to Certification Status of the City of Port Aransas (City) Dune Protection and Beach Access Plan (Plan).

The intent of this rulemaking is to fully certify the inclusion of the Erosion Response Plan (ERP) as an amendment to the City Plan.

Copies of the Plan and ERP are available from the City of Port Aransas, 710 W. Avenue A, Port Aransas, Texas 78373-4128, phone number (361) 749-4111, and from the GLO's Archives Division, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, phone number (512) 463-5277.

BACKGROUND AND ANALYSIS OF PROPOSED AMENDMENT

The proposed amendment of §15.24 (relating to Certification Status of City of Port Aransas Dune Protection and Beach Access Plan) adds the ERP as an attachment to the Plan. The ERP establishes a building setback line that is 200 feet landward of the line of vegetation or a distance 60 times the historical annual erosion rate as published by the Bureau of Economic Geology, whichever is greater. However, the ERP contains an exception to the prohibition on construction by demonstrating to the satisfaction of the City that no practicable alternative to construction seaward of the building setback area exists and by adhering to stricter construction requirements. The ERP also includes criteria for voluntary acquisition of property seaward of the building setback line. The ERP also sets enhanced dune protections and contains procedures for preserving and enhancing access to and use of the public beach.

FISCAL AND EMPLOYMENT IMPACTS

Ms. Young has determined that there may be fiscal implications to local governments or additional costs of compliance for large and small businesses or individuals resulting from proposed new rules for implementation of the ERP. However, these fiscal impacts cannot be estimated with certainty at this time, since development plans for construction seaward of the setback lines and the specific content of these plans vary depending on the type and location of the construction. In addition, it is the opinion of the GLO that the costs of implementation of the provisions for construction in the ERP will be offset by a reduction in public expenditures for erosion and storm damage losses to private and public property. Likewise, costs of compliance for businesses or individuals will be offset by reduction in losses due to storm damage. New structures that are constructed behind the building setback line will have reduced losses because of a reduction in the intensity of storm surge and a delayed exposure to erosion.

Additionally, implementation of the critical dune preservation, restoration and enhancement goals will result in increased protection for structures which are located landward of the dune conservation area. New structures constructed seaward of the building setback line will also have reduced losses because of stricter building standards. In addition, the presumption of compliance with dune mitigation sequence requirements for avoidance and minimization will simplify and reduce the cost to developers for crafting mitigation plans for construction seaward of the dune protection line.

GLO has determined that the proposed rulemaking will have no adverse local employment impact that requires an impact statement pursuant to Texas Government Code §2001.022.

PUBLIC BENEFIT

Ms. Young has determined that the public will benefit from the proposed amendment because the GLO will be able to administer the coastal public land program more efficiently and be able to provide the public more certainty and clarity in the process. The public will also benefit from the adoption of the ERP because coastal public land, and therefore the permanent school fund, will be protected by reducing the possibility of structures becoming located on state-owned submerged lands, which increases expenditure of public funds for removal of the unauthorized structures.

In addition, the public will benefit from the adoption of the ERP because of reduced public expenditures associated with storm damage and erosion, such as loss of structures and public infrastructure and disaster response costs. The City is proposing to establish a building setback line that is 200 feet landward of the line of vegetation or a distance 60 times the historical annual erosion rate as published by the Bureau of Economic Geology, whichever is greater. The building setback line is depicted on maps in Appendix A of the ERP. In addition, the City is proposing to establish a backup building setback line that is located 320 feet landward of the mean high water line or a distance 70 times the Bureau of Economic Geology historical annual erosion rate and as measured landward from the mean high water line, whichever is greater. The City's proposed backup building setback line is for areas where dunes are destroyed or dunes do not exist. Under the ERP, landowners are allowed to obtain an exception to the prohibition on construction by demonstrating to the satisfaction of the City that no practicable alternative to construction seaward of the landward extent of the building setback line exists and by adhering to stricter construction requirements. By encouraging the placement of structures further landward, there will be a reduction in the hazards created by buildings that are subjected to storm surge and a reduction in the vulnerability of buildings to storm tide and erosion.

The ERP also includes enhanced dune protections and identifies priority restoration areas. Enhancing dune protections and protecting the foredune ridge will allow natural dune processes to continue with minimal disturbance. In addition, by enhancing dunes, a natural storm buffer is formed, which helps reduce the risks to life, helps reduce public expenses for disaster relief, and helps protect property from storm damage. Furthermore, by identifying areas where restoration is needed, the ERP will assist the local government in focusing mitigation and restoration in areas that may be vulnerable to storm inundation and are potential avenues for flood waters that may cause damage to public infrastructure and private properties.

The public will also benefit from construction standards applied to properties that are exempted from the general prohibition on construction seaward of the setback line. The construction standards require that a registered professional engineer provide plans and certifications showing that the construction will reduce public expenditures due to erosion and storm damage. The plans and certifications must show that the construction will include a minimum of two-foot freeboard above FEMA's base flood elevation to the finished floor elevation of the lowest habitable floor and that no enclosure will be below the base flood elevation. Further, the construction must be consistent with the ASCE 24-05 flood resistant design and construction standards. All construction must also be designed to minimize impacts to natural hydrology and all habitable structures must be feasible to relocate. The plans and certifications should also show that the location of all construction will be landward of the landward toe of the foredune ridge and as far landward as practicable.

Additionally, existing structures and properties constructed seaward of the building setback line will be protected by local government implementation of plans to improve foredune ridges and beach access points to protect against storm surge. Scientific and engineering studies considered by the GLO noted that during Hurricane Alicia in 1983, vegetation line retreat and landward extent of storm washover deposits were greater for developed areas than for natural areas (Bureau of Economic Geology Circular 85-5). This difference is attributed in part to the fact that naturally occurring vegetated dunes are stronger than reconstructed dunes that do not meet minimum height, width and material requirements (Circular 85-5).

ENVIRONMENTAL REGULATORY ANALYSIS

GLO has evaluated the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment to §15.24 is not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking implements legislative requirements in Texas Natural Resources Code §§33.101 - 33.136 relating to the board's ability to grant rights in coastal public land.

TAKINGS IMPACT ASSESSMENT

GLO has evaluated the proposed rulemaking in accordance with Texas Government Code §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines to determine whether a detailed takings impact assessment is required. GLO has determined that the proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, §17 and §19 of the Texas Constitution. Furthermore, GLO has determined that the proposed rulemaking contains exceptions to the building setback line, so that a private real property is not affected in a manner that restricts or limits the owner's right to the property that would not otherwise exist in the absence of the rule amendment.

The ERP establishes and implements a building setback line that includes guidelines providing exemptions for property for which the owner has demonstrated that no practicable alternative to construction seaward of the building setback line exists. The definition of the term "practicable" in 31 TAC §15.2(55) of the Beach/Dune Rules allows a local government to consider the cost of implementing a technique such as the setback provisions in determining whether it is "practicable" in a particular application for development. In applying its regulation the City will allow construction in the area seaward of the building setback line if certain construction standards are met and by requiring that such construction will be landward of the landward toe of the foredune ridge and as far landward as practicable. In addition, building setback lines adopted by local governments under that section would not constitute a statutory taking under the Private Real Property Rights Preservation Act inasmuch as Texas Natural Resources Code §33.607(h) as added by HB 2819 provides that Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by §33.607.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The proposed rulemaking is subject to the Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(E) - (I) and (c) (relating to Actions and Rules Subject to the CMP). GLO has reviewed these proposed actions for consistency with the CMP's goals and policies. The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction of in the Beach/Dune System). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, GLO has determined that the proposed actions are consistent with applicable CMP goals and policies. The proposed amendment will be distributed to the Commissioner in order to provide him an opportunity to provide comment on the consistency of the proposed amendment during the comment period.

The amended rule provides certification that the ERP is consistent with the CMP goals outlined in 31 TAC §501.12(1) - (3) and (6). These goals seek protection of coastal natural resource areas (CNRAs), compatible economic development and multiple uses of the coastal zone, minimization of the loss of human life and property due to the impairment and loss of CNRA functions, and coordination of GLO and local government decision-making through the establishment of clear, effective policies for the management of CNRAs. The ERP is tailored to the unique natural features, degree of development, storm, and erosion exposure potential for the City. The ERP is also consistent with the CMP policies outlined in 31 TAC §501.26(a)(1) and (2) that prohibit construction within a critical dune area that results in the material weakening of dunes and dune vegetation or adverse effects

on the sediment budget. The ERP will provide reduced impacts to critical dunes and dune vegetation by placement of structures further landward, reduce dune area habitat and biodiversity loss, and reduce structure encroachment on the beach which leads to interruption of the natural sediment cycle.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311, or email walter.talley@glo.texas.gov. Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Natural Resources Code §33.607, relating to GLO's authority to adopt rules for the preparation and implementation by a local government of a plan for reducing public expenditures for erosion and storm damage losses to public and private property.

Texas Natural Resources Code §§33.601 - 33.613 are affected by the proposed amendment.

§15.24. Certification Status of City of Port Aransas Beach Dune Protection and Beach Access Plan.

(a) - (b) (No change.)

(c) The General Land Office certifies as consistent with state law the amendment to the City of Port Aransas plan that was adopted by the City Council of the City of Port on August 16, 2012, Resolution No. 2012-07. The resolution amended the plan by adding the City of Port Aransas Erosion Response Plan as Attachment 8 to the plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2012.

TRD-201206228
Larry Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

The Texas Parks and Wildlife Department proposes amendments to §§53.2, 53.3, 53.30, 53.60, and 53.90, concerning Fees.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §53.2, concerning License Issuance Procedures, Fees, Possession and Exemption Rules, would alter subsection (c) to clarify that the term "electronically," when used in the context of license and stamp issuance, includes issuance on-line as well as by telephone. The proposed amendment also eliminates references to "designated representatives" with respect to electronic sales. The department does not utilize third parties to sell licenses over the phone or on-line.

The proposed amendment to §53.3, concerning Combination Hunting and Fishing License Packages, would alter paragraphs (4) - (6) and (8) to clarify that the hunting license included in the resident senior combination hunting and freshwater fishing package, the resident senior combination hunting and saltwater fishing package, the resident senior combination hunting and "all water" fishing package, and the resident senior super combination hunting and "all water" fishing package is a senior hunting license.

The proposed amendment to §53.30, concerning Facility Admission and Use Fees, would remove Old Tunnel Wildlife Management Area (WMA), Mason Mountain WMA, and Parrie Haynes Ranch from the subchapter and eliminate the fees established for public use of those facilities. Old Tunnel has been transferred to the inventory of state parks and is no longer a WMA; entrance and user fees for state parks are addressed in Chapter 59. Prior to 2010, Mason Mountain WMA was not operated as a federal project under the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act or "PR"). In order to accommodate budgetary restraints with respect to the availability of appropriated state funds, the department determined that it was necessary to operate Mason Mountain WMA as a PR project. Under the rules of the federal program, "program income" (defined as "gross income received by the grantee directly generated by a grant-supported activity or earned only as a result of the grant agreement during the grant period") is counted against the federal share of the project cost, which increases the amount of state dollars that must be spent to gain federal matching funds. Therefore, eliminating the fees for Mason Mountain WMA will result in the department obtaining the maximum amount of federal funds for operation of the WMA. The Parrie Haynes Ranch property is no longer being leased by the department and there is therefore no reason to retain the fee rules for the property.

The proposed amendment to §53.60, concerning Stamps, would insert language to reflect the correct name of the saltwater sportfishing stamp.

The proposed amendment to §53.90, concerning Display of Registration Validation Sticker, would restructure subsection (a) to provide more detail as to the types of vessels and persons that are exempt from registration display requirements. Under Parks and Wildlife Code, §31.022(b), the department may exempt a vessel if it belongs to a class of vessels that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law. The intent of the current rule is to exempt vessels that are not required to be numbered by the United States Coast Guard (USCG). In order to be clear as to what classes of vessels are exempt from state display requirements, the proposed amendment identifies specific classes of vessels that are exempt from USCG requirements.

Julie Horsley, Director of Planning and Analysis, has determined that for each of the first five years that the rules as proposed

are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Ms. Horsley also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be accurate rules.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, micro-businesses, or persons required to comply with the rules as proposed. The rules are nonsubstantive in nature. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ms. Julie Horsley, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4913 (e-mail: julie.horsley@tpwd.state.tx.us).

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.2, §53.3

The amendments are proposed under the authority of Parks and Wildlife Code, §12.701, which allows the department to authorize the issuance of a license, stamp, permit, or tag by a license deputy; and §50.001, which authorizes the department to issue combination hunting and fishing licenses and license packages.

The proposed amendments affect Parks and Wildlife Code, Chapters 12 and 50.

§53.2. License Issuance Procedures, Fees, Possession and Exemption Rules.

(a) - (b) (No change.)

(c) Issuance of licenses and stamps electronically (on-line or [~~including~~] by telephone).

(1) A person may acquire recreational hunting and/or fishing licenses electronically from the department [~~or its designated representatives~~] by agreeing to pay a convenience fee of up to $5 per license in addition to the normal license fee.

(2) A person may acquire recreational hunting and/or fishing stamps electronically from the department [~~or its designated representatives~~] by agreeing to pay a convenience fee of up to $5 per stamp order in addition to the normal stamp fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(d) - (f) (No change.)

§53.3. Combination Hunting and Fishing License Packages.

Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) - (3) (No change.)

(4) Resident senior combination hunting and freshwater fishing package--$16. Package consists of a senior resident hunting license, a resident fishing license and a freshwater fish stamp;

(5) Resident senior combination hunting and saltwater fishing package--$21. Package consists of a senior resident hunting license, a resident fishing license, a saltwater sportfishing stamp, and a red drum tag;

(6) Resident senior combination hunting and "all water" fishing package--$26. Package consists of a senior resident hunting license, a resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, and a red drum tag;

(7) (No change.)

(8) Resident senior super combination hunting and "all water" fishing package--$32. Package consists of a senior resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a senior resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag;

(9) - (11) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206285
Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The amendment is proposed under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to es-

tablish a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§53.30. Facility Admission and Use Fees.

(a) (No change.)

(b) As determined and authorized by the executive director, the department may charge entrance and facility use fees within the ranges established or the amounts specified in this section.

(1) - (2) (No change.)

[(3) Old Tunnel Wildlife Management Area. Entrance fees:]

[(A) upper visitation area--free; and]

[(B) lower visitation area--$5.]

[(4) Mason Mountain Wildlife Management Area.]

[(A) bunk (per night)--$20 to $24;]

[(B) room (per night)--$60 to $72; and]

[(C) Big House rental--$300 to $360 per day.]

[(5) Parrie Haynes Ranch.]

[(A) Definitions.]

[(i) Rig--a vehicle/horse trailer tandem;]

[(ii) Volunteer--a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch; and]

[(iii) Youth group--a group at least 60% of which are 17 years of age or younger.]

[(B) General. Use of the Parrie Haynes Ranch facilities listed in subparagraphs (C), (D) and (F) of this paragraph is on an as-available basis by reservation only.]

[(C) Facility fees. On the basis of availability, use of the Longhorn Lodge, Hoblitzelle Activity Pavilion, Rio Vista Hall, Buffalo Bunkhouse Meeting Rooms, and Pool is included for groups of 25 or more persons who purchase lodging and meals at the Hilltop Complex.]

[(i) Lodging.]

[(I) Mountain Laurel House--$150 to $250 per 24-hour period;]

[(II) Lone Star House--$250 to $400 per 24-hour period;]

[(III) Buffalo Bunkhouse--$300 to $600 per 24-hour period;]

[(IV) Cabins (Llano, Frio, Comal, Lantana, Primrose, Rattlesnake, Hawk, Coyote, and Bobcat)--$300 to $500 per 24-hour period, subject to applicable occupancy restrictions; and]

[(V) Rustic Hunter's Cabin--$50 to $100 per 24-hour period.]

[(ii) Other facilities.]

[(I) Longhorn Lodge (classroom)--$150 to $250 per 24-hour period;]

[(II) Hoblitzelle Activity Pavilion--$100 to $150 per 24-hour period;]

[(III) Buffalo Bunkhouse (meeting rooms)--$50 to $150 per 24-hour period;]

[(IV) Rio Vista Hall--$150 to $250 per 24-hour period;]

[(V) pool--$150 to $250 per 24-hour period (lifeguard not provided).]

[(iii) Miscellaneous.]

[(I) kayak rental--$10 to $40 per kayak per 24-hour period;]

[(II) ropes challenge course--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one certified facilitator provided by the user).]

[(III) shooting range--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one person, provided by the user, who is certified by the department or the National Rifle Association as a hunter education instructor); and]

[(IV) Hilltop equestrian arena--$200 to $300 per 24-hour period.]

[(V) Youth Hunting Package (maximum: two nights, lodging (Rustic Hunter's Cabin) and hunting only)--$20 to $60 per person per 48-hour period;]

[(D) camping and day use:]

[(i) camping:]

[(I) primitive--$5 to $20 per person per 24-hour period; and]

[(II) RV/electrical connection--$16 to $30 per 24-hour period.]

[(ii) day use: $3 to $15 per person per 24-hour period.]

[(E) Equestrian Center fees. When necessary to address staffing and management priorities, the Executive Director by order may close the equestrian center to overnight visitation and waive the fees established in this subparagraph.]

[(i) Day use (includes overnight, no lodging)--$10 to $20 per 24-hour period per rig;]

[(ii) Overnight (with electrical hook-up)--$16 to $30 per 24-hour period per rig;]

[(iii) Extra vehicle--$5 to $15 per 24-hour period;]

[(iv) Cowboy Cabin--$20 to $40 per 24-hour period;]

[(v) Hideout Clubhouse (including porch)--$120 to $200 per 24-hour period; and]

[(vi) Hideout Clubhouse (porch only)--$60 to $80 per 24-hour period.]

[(F) Meals.]

[(i) Meal fees shall be from $5 to $25 per person per meal, depending on the meal plan selected.]

[(ii) For groups of fewer than 25 people, the minimum meal fee shall be the fee that would be charged to a group of 25 persons, depending on the meal plan selected.]

[(G) Exceptions.]

~~[(i) The fees listed in subparagraph (C)(i) of this paragraph shall be discounted by 40% for youth groups.]~~

~~[(ii) Use of the Parrie Haynes Ranch by governmental entities shall be by agreement according to the relevant provisions of Government Code, Chapters 771 and 791, regarding Interagency Cooperation and Interlocal Cooperation.]~~

~~[(iii) Volunteers are exempt from all fee requirements.]~~

~~[(iv) Existing subleases of Parrie Haynes Ranch approved by the Texas Youth Commission are exempt from the provisions of this section.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under the authority of Parks and Wildlife Code, §46.002, which establishes statutory exceptions to fishing license requirements.

The proposed amendment affects Parks and Wildlife Code, Chapter 46.

§53.60. Stamps.

(a) - (d) (No change.)

(e) Stamp Exemptions.

(1) - (5) (No change.)

(6) All persons meeting the definition of a qualified disabled veteran under the provisions of Parks and Wildlife Code, §42.012(c), are exempt from the fees for the following stamps:

(A) - (C) (No change.)

(D) saltwater sportfishing [~~fishing~~]; and

(E) (No change.)

(7) All Texas residents on active duty in the armed forces of the United States (including members of the Reserves and National Guard on active duty) are exempt from the fees for the following stamps:

(A) - (C) (No change.)

(D) saltwater sportfishing [~~fishing~~]; and

(E) (No change.)

(8) - (9) (No change.)

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. DISPLAY OF BOAT REGISTRATION

31 TAC §53.90

The amendment is proposed under the authority of Parks and Wildlife Code, §31.022, which authorizes the department to exempt certain vessels from the numbering requirements established under Chapter 31.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.90. Display of Registration Validation Sticker.

(a) Documented vessels are required to display the registration validation sticker on both sides of the bow and maintain current documentation through the United States Coast Guard or display the state-assigned TX numbering series with the decal. The following are exempt from registration requirements:

(1) commercial tugboats;

(2) [~~Commercial vessels used in coastal shipping and~~] vessels exceeding 115 feet in length; and [~~are exempt from registration requirements.~~]

(3) pilot or crew boats transporting freight, supplies, or personnel to or from cargo ships, freighters, or offshore oil infrastructure.

(b) For the purposes of this section, vessel length is the length of the vessel listed on the United States Coast Guard national documentation.

(c) [~~(b)~~] Vessels registered as antique boats are permitted to display the registration validation sticker on the left portion of the windshield. In the absence of a windshield, the registration validation sticker must be attached to the certificate of number and made available for inspection when the boat is operated on public water.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.5 - 53.7

The Texas Parks and Wildlife Department proposes amendments to §§53.5 - 53.7, concerning Fees. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, would establish the fee for a replacement senior resident hunting license or replacement youth hunting license at $6. Parks and Wildlife Code, §42.017(d) provides that the fee for duplicate licenses or tags issued under Chapter 42 is $5 or an amount set by the Commission, whichever is more. Under current §53.5(a)(4), the fee for a replacement hunting license is $10. The department has determined that the fee to replace a license should not be more than the license originally cost to obtain.

The proposed amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, would establish the fee for a replacement special resident all-water fishing package at $6. Parks and Wildlife Code, §46.006(a) provides that the fee for duplicate licenses or tags issued under authority of Chapter 46 is $5 or an amount set by the commission, whichever is more. Under §53.6(c)(14), the fee to replace a fishing license or package is $10. The department has determined that the fee to replace a license should not be more than the license originally cost to obtain. The proposed amendment also makes nonsubstantive changes in subsections (b)(2) and (c)(7) for purposes of grammatical consistency.

The proposed amendment to §53.7, concerning Furbearing Animal Licenses and Permits, would correct the fee amount for the nonresident wholesale dealer's license to reflect the minimum fee required by statute. Under Parks and Wildlife Code, §71.009, the fee for a nonresident wholesale dealer's license is $400.75 or an amount set by the commission, whichever is higher. In 2007, the department received a petition for rulemaking from the Texas Fur Trappers and Fur Hunters that requested a reduction of the nonresident wholesale dealer's license fee as an incentive to encourage nonresident interest in the furbearing animal trade in Texas. In response, the department promulgated a fee reduction to $250. In 2009, as part of a general fee increase for all licenses and permits, the fee amount was increased to $263. The legislative rule review revealed the discrepancy between the current fee amount and the statutory minimum. The proposed amendment would establish the fee at $401, which is the statutory minimum rounded upwards to the nearest whole dollar for accounting and audit purposes.

Julie Horsley, Director of Planning and Analysis, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of enforcing or administering the rules.

For the amendment to §53.5, the fiscal implications to the department are estimated to be a reduction in revenue of between $10,572 and $12,150 per year, based on license sales data from 2010, 2011, and 2012. This figure was derived by multiplying the lowest and highest annual sales of the replacement senior resident hunting license and youth hunting license by $4, which is the difference between the current cost of a duplicate license and the cost of a duplicate license under the proposed amendment, then adjusting for amounts retained by license deputies.

For the amendment to §53.6, the fiscal implications to the department are estimated to be a reduction in revenue of between $50 and $96 per year, based on license sales data from 2010, 2011, and 2012. This figure was derived by multiplying the lowest and highest annual sales of the replacement special resident all water fishing package by $4, which is the difference between the current cost of a replacement license and the cost of a replacement license under the proposed amendment, then adjusting for amounts retained by license deputies.

For the amendment to §53.7, the fiscal implications to the department will be positive, assuming sales of the nonresident wholesale fur dealer's license increase or remain stable, since the proposed amendment would increase the fee for that license. The department estimates that the amendment will result in a revenue increase between $132 and $530 per year, based on license sales data from 2010, 2011, and 2012. The department has sold not more than four or less than one nonresident wholesale fur dealer's licenses per year in that time.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rules.

Ms. Horsley also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that accurately reflect their statutory basis.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

With respect to the proposed amendments to §53.5 and §53.6, there will be no adverse economic impacts to small businesses or micro-businesses, as the proposed amendments affect the issuance of replacement licenses that extend a noncommercial privilege to enjoy public resources, and in any event represent a reduction of $4 from the current cost of obtaining a replacement senior resident hunting license, youth hunting license or special resident all-water fishing license. There will be no adverse economic impacts to persons required to comply with the amendments as proposed.

With respect to the proposed amendment to §53.7, there will be an adverse economic effect on small businesses, micro-businesses, and persons required to comply with the rule as proposed; however, since the rule establishes a fee that is the min-

imum value allowable by statute, any adverse economic impact is a result of statutory rather than regulatory requirements. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ms. Julie Horsley, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4913 (e-mail: julie.horsley@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §42.017, which authorizes the commission to establish a fee for a duplicate hunting license or tag; §43.403, which authorizes the commission to establish a fee for the saltwater sportfishing stamp when that fee is in excess of $5; §46.006, which authorizes the commission to establish a fee for duplicate fishing licenses and tags; and §71.009, which authorizes the commission to set a fee of $400.75 or greater for a nonresident wholesale fur dealer's license.

The proposed amendments affect Parks and Wildlife Code, Chapters 42, 43, 46, and 71.

§53.5. Recreational Hunting Licenses, Stamps, and Tags.

(a) Hunting licenses:

(1) - (3) (No change.)

[~~(4) replacement hunting--$10;~~]

(4) [~~(5)~~] general nonresident hunting--$315;

(5) [~~(6)~~] nonresident special hunting--$132;

(6) [~~(7)~~] nonresident five-day special hunting--$48;

(7) [~~(8)~~] nonresident spring turkey hunting--$126; and

(8) [~~(9)~~] nonresident banded bird hunting--$27.

(b) Replacement licenses. Except as otherwise provided in this subsection, the fee for replacement of any hunting license is $10.

(1) senior resident hunting replacement--$6; and

(2) youth hunting replacement--$6.

(c) [~~(b)~~] Hunting stamps and tags:

(1) upland game bird--$7;

(2) migratory game bird--$7;

(3) archery hunting--$7; and

(4) Federal Migratory Bird Hunting and Conservation Stamp--$17.

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) (No change.)

(b) The items listed in this subsection may be sold individually or as part of a package. Stamps sold individually shall be valid from the date of purchase or the start date of the license year, whichever is later, through the last day of the license year. Stamps sold as part of a fishing package shall be valid for the same time period as the license included in the package as specified in this rule. The price of these stamps is as follows:

(1) (No change.)

(2) saltwater sportfishing stamp--$7 plus a saltwater sportfishing [~~sport fishing~~] stamp surcharge of $3. A red drum tag shall be issued at no additional charge with each saltwater sportfishing stamp.

(c) Fishing packages and licenses. The price of any fishing package shall be the sum of the price of the individual items included in the package.

(1) - (6) (No change.)

(7) "year-from-purchase" resident "all water" fishing package--$47. Package consists of a "year-from-purchase" resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(8) - (11) (No change.)

(12) non-resident one-day "all water" fishing license--$16. One red drum tag shall be available at no additional charge with the purchase of the first one-day license only; and

(13) Lake Texoma fishing license--$12. Holders of a valid Lake Texoma License are exempt from freshwater fishing stamp requirements solely for the purpose of fishing on Lake Texoma.[~~; and~~]

[~~(14) replacement fishing package or license--$10.~~]

(d) Replacement licenses and packages.

(1) Except as otherwise provided in this subsection, the fee for replacement of a fishing package or license is $10.

(2) The fee for replacement of a special resident all-water fishing package is $6.

(e) [~~(d)~~] Fishing tags:

(1) exempt angler red drum tag--$3. Provides a red drum tag for persons that are exempt from the purchase of a resident or nonresident fishing license of any type or duration;

(2) bonus red drum tag provides a second red drum tag to persons that have previously received a red drum tag)--$3;

(3) individual bait-shrimp trawl tag--$37; and

(4) saltwater trotline tag--$5.

§53.7. Furbearing Animal Licenses and Permits.

(a) - (d) (No change.)

(e) nonresident wholesale fur dealer's--$401 [~~$263~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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31 TAC §53.14

The Texas Parks and Wildlife Department proposes an amendment to §53.14, concerning Deer Management and Removal Permits. The proposed amendment would reduce the fee for deer breeder permits and renewals from $400 to $200. In proposed amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610 published elsewhere in this issue of the *Texas Register,* the department proposes to mandate that all deer breeders submit required reports and notifications via an Internet-based system.

The current fee for a deer breeder permit or renewal is $400; however, the rules also provide for a reduced fee of $200 for deer breeders who submit at least 85% of specified reports and permit activations via the department's Internet-based system. If the proposed amendments to Chapter 65, Subchapter T are adopted, all deer breeders will qualify for the reduced permit/renewal fee, since all reporting and notification will be required to be submitted via the Internet. Therefore, the practical effect of requiring all reporting to be done via the Internet is to reduce the permit/renewal fee to $200.

Mitch Lockwood, Big Game Program Director, has determined that there may be fiscal implications to state government as a result of enforcement or administration of the rules for each of the first five years that the rules as proposed are in effect. Although the imposition of mandatory electronic submission of data will increase program efficiency, there will be a corresponding decrease in program revenue of $200 per facility associated with permittees who are currently not utilizing the department's Internet-based application. A deer breeder permit authorizes a person to operate one deer breeder facility. One person may hold several permits, but must submit a report and a renewal fee annually for each facility. Approximately 20% of all deer breeder's facility reports were not received via the Internet-based application in Fiscal Year 2012. Permittees therefore paid the higher permitting fee of $400/year. Under current rule, a deer breeder who submits at least 85% of required reports and notifications electronically is entitled to a 50% reduction in the fee for permit renewal. In Fiscal Year 2012, the department's Internet-based application was used to file reports for 1,053 facilities, and those permittees therefore received the discount. Under the amendments as proposed, all 1,313 current facilities would qualify for the discount, since use of the system would be mandatory. As a result, 260 deer breeder facilities that currently do not qualify for the fee reduction would pay the lower $200 fee, which could create a $52,000 per year loss in revenue, assuming the number of permittees remains stable. The department believes, however, that the cost of revenue reduction will be approximately offset by increased efficiency, since existing staff will have additional time to devote to tasks other than data entry and records research.

There will be no fiscal implications to other units of state or local government.

Mr. Lockwood also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be increased convenience and economy for the regulated community and the ability of the department to use resultant efficiencies to address increasing workloads with current staff.

The proposed amendment does not impose a new fee for deer breeder permits and renewals, it simply changes the amount of the fee that is required by §65.603, concerning Application and Permit Issuance. As noted earlier, the proposed amendment to create that requirement is published elsewhere in this issue of the *Texas Register.* The analysis of economic impacts to persons required to comply, small businesses, and micro-businesses from that proposal is reproduced here for convenience.

There could be adverse economic effects on persons required to comply with the proposed amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610, published elsewhere in this issue of the *Texas Register.* Those amendments would collectively require all deer breeder permittees to ensure that the reporting and notification requirements of Chapter 65, Subchapter T, are effected via the Internet. For persons who already own or have access to a computer or personal digital device and have Internet access, there is no adverse economic cost to comply with the proposed rules. For persons who do not possess a computer or other data device that can access the Internet (such as a tablet or smart phone), compliance with proposed amendments would require the permittee to either use a public computer with Internet access, purchase or lease hardware and Internet access, or to absorb the cost of hiring someone with the equipment and expertise to perform the required actions. Department research indicates that adequate hardware is widely available and can be purchased for approximately $200. Internet access is an additional charge that varies from approximately $15 to $100 per month, depending on the technology and carrier plan. The department has determined that the cost of hiring professional expertise to submit required information should not exceed a maximum of $90 per hour and probably would be much less, since the expertise required is minimal. Department data indicate that the highest volume of reporting and notification done by any permittee in the previous year consisted of approximately 459 reporting interactions with the department. The department estimates that this represents approximately 9.5 hours of consultant time, yielding a maximum annual expense for compliance of approximately $855. Because all permittees will receive a discount of 50% on the $400 annual fee for using the Internet-based reporting system, the department estimates that the cost of compliance for persons who purchase hardware and Internet access would be recovered in less than two years (approximately $400), and for persons who purchase consultant services, the cost of compliance would be approximately $855.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits;

adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610, published elsewhere in this issue of the *Texas Register,* could have an adverse economic impact on small businesses and micro-businesses. To ensure that the analysis captures every entity that might be affected, the department considers that most if not all deer breeders qualify as a small or micro-business. There are 1,265 deer breeders permitted by the department. The department notes that in a test exercise earlier this year, the department identified only one permittee who experienced difficulty accessing the department's Internet-based system, and that person was eventually able to do so by visiting a public library.

The proposed amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610, published elsewhere in this issue of the *Texas Register,* would require all permittees to submit required information to the department via the Internet. For persons who already own or have access to a computer or personal digital device (such as a tablet or smart phone) and have Internet access, there is no adverse economic cost to comply with the proposed rules. Permittees who do not already own or have access to a computer or other digital device with Internet access would have to ensure that the reporting and notification requirements of the subchapter are effected via the Internet. For persons who already own or have access to a computer or personal digital device and have Internet access, there is no adverse economic cost to comply with the proposed rules. For persons who do not possess a computer or other digital device that can access the Internet, compliance with proposed amendments would require the permittee to either access a public computer with Internet access, purchase or lease hardware and Internet access, or to absorb the cost of hiring someone with the equipment and expertise to perform the required actions. Department research indicates that adequate hardware is widely available and can be purchased for approximately $200. Internet access is an additional charge that varies from approximately $15 to $100 per month, depending on the technology and carrier plan resulting in an estimated additional cost of between $380 and $1400 for the first year ($200, plus the monthly Internet provide costs of $15 - $100/month), but a cost of $180 to $1,200 a year for subsequent years consisting solely of the Internet provider costs.

The department has determined that the cost of hiring professional expertise to submit required information should not exceed a maximum of $90 per hour and probably would be much less, since the expertise required is minimal. Department data indicate that the highest volume of reporting and notification done by any permittee in the previous year consisted of approximately 459 reporting incidents with the department. The department estimates that this represents approximately 9.5 hours of consultant time, yielding a maximum annual expense for compliance of approximately $855.

However, a portion of these costs would be offset by the reduced permit fee. Because permittees who are currently submitting hard-copy documents will receive a discount of 50% on the current $400 annual fee for using the Internet-based reporting system, the department estimates that a portion of the cost of compliance for persons who purchase hardware and Internet access or engage the services of a consultant would be recovered over time.

The department considered several alternatives to achieve the goals of the proposed amendments while reducing potential adverse impacts on small and micro-businesses and persons required to comply. The component of the proposed rules that constitutes an adverse economic impact to small and micro-businesses is the requirement to file all required reports and notifications via the Internet. One alternative the department considered was status quo. This alternative was rejected because one goal of the proposed amendments is to increase the efficiency with which the department administers the deer breeder program, given that additional manpower is not a viable option. The department concluded that requiring all reporting to be completed electronically would be the most effective means to accomplish that goal while reducing the adverse economic impacts to small and micro-businesses.

The department also considered leaving reporting media optional but further reducing fees for those who report electronically. This alternative was rejected because the department has determined that the investment in staff time to continue processing and reconciling hard-copy documents by manual methods in even limited amounts is not justifiable.

The department also considered imposing an increased fee for persons who desire to continue to file reports and notifications manually. This alternative was rejected because it represents a continuing expense to the department that is unjustifiable in light of the small number of permittees that would be affected, and because department staff would still be required to process and reconcile the reporting information manually.

The department also considered the option of requiring permittees who desire to continue to file reports and notifications manually to attend a department-sponsored training course with the goal of improving the timeliness and quality of manual reporting. This alternative was rejected because it represents a continuing expense to the department that is unjustifiable in light of the small number of permittees that would be affected, and because department staff would still be required to process and reconcile the reporting information manually.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposal may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677 (e-mail: mitch.lockwood@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to promulgate rules governing deer breeder permits, including fees and reporting requirements.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§53.14. Deer Management and Removal Permits.

(a) Deer breeding and related permits.

[~~(1)~~] Deer breeder's and deer breeder's renewal--$200. [~~$400; and~~]

[~~(2) Deer breeder's renewal if qualified for reduced fee for electronic record submission--$200.~~]

(b) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 59. PARKS

The Texas Parks and Wildlife Department proposes amendments to §59.3, concerning Activity and Facility Use Fees, and §59.221, concerning Acceptance of Gratuities.

The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §59.3 would increase the upper end of the fee range for recreation/meeting hall facilities in the Group One category from $300 to $1,000. The department establishes a fee range, consisting of an upper and lower value, for each type of facility or service (or combination thereof) available at a state park, which may vary from site to site. The purpose of the fee-range approach is to provide the flexibility for the department to make incremental adjustments to fee structures from time to time (within the approved ranges) for individual units of the park system in response to changing conditions over a multi-year period. The addition of a new facility at Palo Duro Canyon State Park offers substantially higher grade amenities than were previously available in any state park, with correspondingly higher market value than the current fee range permits, which necessitates an increase in the allowable fees for recreation/meeting halls.

The proposed amendment to §59.221 would authorize the executive director to allow the acceptance of gratuities by department employees at a hospitality unit of a state park. The 80th Texas Legislature in 2007 enacted House Bill 12, which amended Parks and Wildlife Code, §11.0262, to allow an employee of the state parks division to accept a gratuity if the gratuity is offered by a customer of a hospitality unit of the state parks division in appreciation of being served food or beverages or receiving some other customer service from the employee. The proposed amendment would authorize the acceptance of gratuities by certain state park employees with the approval of the executive director.

Michael Crevier, Director of Business Management, State Parks Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of enforcing or administering the proposed amendment to §59.3, which increases the upper boundary of the fee range for recreation/meeting hall facilities in the Group One category. Fee changes within the ranges established by rule are determined by analysis of user demographics, benefit, demand, and comparability with local providers of similar facilities and/or services operated under similar conditions, and recreational industry trends. The department estimates that the maximum potential revenue increase resulting from the proposed rules will be approximately $46,900 per year, if Palo Duro State Park is the only park in the state parks system that implements fee increases as a result of the increased fee range. The department does not anticipate incorporating fees at any other sites at the current time. This estimate was derived by taking the previous fiscal year's occupancy and use numbers, calculating the sum of the difference between the previous rates and the new fee amounts, and then multiplying previous use numbers by the derived sum of the two rates. The department notes that the estimate used the upper value of each fee range to make this calculation; however, the upper value of the proposed fee range will not be imposed immediately. Thus, the estimate is an approximate value representing the total possible revenue increase under the proposed rule.

There will be no other fiscal implications for state government or local governments as a result of the proposed amendments.

Mr. Crevier also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the ability of the department to recover appropriate revenue for the use of department facilities and the delivery of hospitality services at state park hospitality centers.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, commission considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, micro-businesses, or persons required to comply with the rules as proposed. The rules would affect gratuities for state park employees and state park guests. Visitation to state parks is not mandatory; therefore, the rules impose no requirements on individuals, small businesses, or micro-businesses. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Mr. Michael Crevier, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8560 (e-mail: mike.crevier@tpwd.state.tx.us).

SUBCHAPTER A. PARK ENTRANCE AND PARK USER FEES

31 TAC §59.3

The amendment is proposed under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish by rule the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§59.3. Activity and Facility Use Fees.

(a) (No change.)

(b) Fee ranges--Group One:

(1) - (7) (No change.)

(8) recreation/meeting hall--$50-$1,000 [~~$50-$300~~];

(9) - (21) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206294
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 389-4775

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SUBCHAPTER I. GRATUITIES

31 TAC §59.221

The amendment is proposed under Parks and Wildlife Code, §11.0262, which allows an employee of the state parks division to accept a gratuity if the gratuity is offered by a customer of a hospitality unit of the state parks division in appreciation of being served food or beverages or receiving some other customer service from the employee, and authorizes the commission to adopt rules necessary to implement the provisions of §11.0262.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§59.221. Acceptance of Gratuities.

(a) An [~~No~~] employee of the department may accept a gratuity offered by a customer of a restaurant, cafeteria, or other food service establishment or hospitality unit of a state park operated by the department if [~~unless~~] the employee has been authorized to do so by the executive director.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206295
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §§65.602, 65.603, 65.605, 65.608, 65.610

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.602, 65.603, 65.605, 65.608, and 65.610, concerning Deer Breeder Permits. The proposed amendments, collectively, would require all permit applications, permit renewals, notifications, and reports be submitted to the department via the department's Internet-based deer breeder application.

Current rules allow for permit applications and renewals, reports, notifications, and similar required interactions with the department to be conducted either electronically or manually. In response to an increasing number of deer breeders and an increasing number of reporting errors, the department in 2005 created an Internet-based application for reporting and recordkeeping. Deer breeder permit holders are not currently required to use the Internet-based application, but they were offered an incentive to do so in 2010 when the department implemented Parks and Wildlife Code, §43.369, as added by Senate Bill 1586 (2009) which required the department and the Texas Animal Health Commission (TAHC) to develop a process for a shared database to include reporting data provided by deer breeders. Section 43.369 also requires the Texas Parks and Wildlife Commission (the Commission) to provide incentives to deer breeders whose cooperation resulted in reduced costs and increased efficiencies. The Commission promulgated rules that provide for a fee reduction of 50% for deer breeder permittees who submitted at least 85% of the required reports and notifications via the Internet. Specifically, the current deer breeder and deer breeder annual renewal fee is $400, but for deer breeder permittees who submit at least 85% of the required reports and notifications via the Internet, the fee is $200. Increased utilization of the Internet-based application has resulted in increased efficiency in program administration; however, the department continues to receive numerous hard-copy reports that are laden with errors, requiring thousands of man hours to reconcile. Reconciliation of hard-copy reports is an arduous process that hampers the department's ability to address the needs of compliant permittees in a timely fashion. On this basis, the department has concluded that making the use of the Internet-based application mandatory is warranted. In a proposed amendment to §53.14 published elsewhere in this issue, the $400 annual fee is eliminated, since hard-copy reporting will be eliminated and all breeders will be paying the $200 annual fee.

The on-line system is designed to (1) significantly reduce reporting errors, (2) provide for more efficient means of herd inventory reconciliation, and (3) make data more immediately available to department regulatory and enforcement personnel. Hard-copy reports, which are manually entered by staff, frequently contain erroneous information and/or omissions, which require substantial amounts of staff time to rectify. Because on-line reporting cannot be successfully completed until all required information has been entered and reconciled by the system against existing historical user data, staff time spent on manual data entry/data reconciliation would be significantly reduced and perhaps eliminated if all reporting were required to be completed on-line.

The proposed amendments to §65.602, concerning Permit Requirement and Permit Privileges; General Provisions; §65.603, concerning Application and Permit Issuance; §65.605, concerning Holding Facility Standards and Care of Deer; §65.608, concerning Annual Reports and Records; and §65.610, concerning Transfer of Deer, would make the changes necessary to require all reporting and notifications to be done via the department's Internet-based application.

The proposed amendment to §65.602 would retitle the section and add new subsection (c) to require all permit applications, permit renewals, notifications, reporting, and recordkeeping to be submitted via an Internet-based deer breeder application provided by the department, unless otherwise provided in the subchapter or in the permit conditions. Although it is the department's intent that all permit applications, permit renewals, notifications, reporting, and recordkeeping be submitted via the Internet application, the department also recognizes that there may be extenuating circumstances, such as a system application problem, that could require an alternative means of submittal.

The proposed amendment to §65.603 would alter subsection (e) to remove language authorizing the submission of authorized agent and facility plan information by fax or mail and add language to create validation mechanisms for the submission of that information via the deer breeder Internet application.

The proposed amendments to §65.605 and §65.608 would remove language referring to paper forms supplied by the department.

The proposed amendment to §65.610 would alter subsection (e)(3) to refer to the deer breeder Internet application, create a mechanism for the validation of submission of transport permit activation, and create an offense for any person to transport a deer under a transport permit unless the person also possesses a notification confirmation number issued by the department for that instance of transport. The proposed amendment does not eliminate the option for transfer permits to be activated by phone. Under Parks and Wildlife Code, §43.367, it is an offense for any person to violate a regulation of the commission promulgated under Parks and Wildlife Code, Chapter 43, Subchapter L. The rule as currently worded requires notification to the department prior to the movement of deer under a transport permit. The proposed amendment creates a mechanism for the permittee to verify that the required notification took place. The proposed amendment to §65.610 also would alter subsection (e)(5) to remove references to paper forms and fax submissions.

Mitch Lockwood, Big Game Program Director, has determined that there may be fiscal implications to state government as a result of enforcement or administration of the rules for each of the first five years that the rules as proposed are in effect. Although the imposition of mandatory electronic submission of data will increase program efficiency, there will be a corresponding decrease in program revenue of $200 per facility associated with permittees who are currently not utilizing the department's Internet-based application. A deer breeder permit authorizes a person to operate one deer breeder facility. One person may hold several permits, but must submit a report and a renewal fee annually for each facility. Approximately 20% of all deer breeder's facility reports were not received via the Internet-based application in Fiscal Year 2012. Permittees therefore paid the higher permitting fee of $400/year. Under current rule, a deer breeder who submits at least 85% of required reports and notifications electronically is entitled to a 50% reduction in the fee for permit renewal. In Fiscal Year 2012, the department's Internet-based application was used to file reports for 1,053 facilities, and those permittees therefore received the discount. Under the amendments as proposed, all 1,313 current facilities would qualify for the discount, since use of the system would be mandatory. As a result, 260 deer breeder facilities that currently do not qualify for the fee reduction would pay the lower $200 fee, which could create a $52,000 per year loss in revenue, assuming the number of permittees remains stable. The department believes, however, that the cost of revenue reduction will be approximately offset by increased efficiency, since existing staff will have additional time to devote to tasks other than data entry and records research.

There will be no fiscal implications to other units of state or local government.

Mr. Lockwood also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be increased convenience and economy for the regulated community and the ability of the department to use resultant efficiencies to address increasing workloads with current staff.

There could be adverse economic effects on persons required to comply with the rules as proposed. The proposed rules would require all permittees to ensure that the reporting and notification requirements of the subchapter are effected via the Internet. For persons who already own or have access to a computer or personal digital device and have Internet access, there is no adverse economic cost to comply with the proposed rules. For persons who do not possess a computer or other digital device that can access the Internet (such as a tablet or smart phone), compliance with proposed amendments would require the permittee to either use a public computer with Internet access, purchase or lease hardware and Internet access, or absorb the cost of hiring someone with the equipment and expertise to perform the required actions. Department research indicates that adequate hardware is widely available and can be purchased for approximately $200. Internet access is an additional charge that varies from approximately $15 to $100 per month, depending on the technology and carrier plan. The department has determined that the cost of hiring professional expertise to submit required information should not exceed a maximum of $90 per hour and probably would be much less, since the expertise required is minimal. Department data indicate that the highest volume of reporting and notification done by any permittee in the previous year consisted of approximately 459 reporting interactions with the department. The department estimates that this represents approximately 9.5 hours of consultant time, yielding a maximum annual expense for compliance of approximately $855. As previously noted, in a proposed amendment to §53.14, concerning Deer Management and Removal Permits, published elsewhere

in this issue of the *Texas Register,* the $400 annual fee is eliminated because the proposed rules will eliminate manual reporting and all breeders will therefore qualify for a reduced permit/renewal fee of $200. Because all permittees will receive a discount of 50% on the $400 annual fee for using the Internet-based reporting system, the department estimates that the cost of compliance for persons who purchase hardware and Internet access would be recovered in less than two years (approximately $400), and for persons who purchase consultant services, the cost of compliance would be approximately $855.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed amendments could have an adverse economic impact on small businesses and micro-businesses. To ensure that the analysis captures every entity that might be affected, the department considers that most if not all deer breeders qualify as a small or micro-business. There are 1,265 deer breeders permitted by the department. The department notes that in a test exercise earlier this year, the department identified only one permittee who experienced difficulty accessing the department's Internet-based system, and that person was eventually able to do so by visiting a public library.

The proposed rules would require all permittees to submit required information to the department via the Internet. For persons who already own or have access to a computer or personal digital device (such as a tablet or smart phone) and have Internet access, there is no adverse economic cost to comply with the proposed rules. Permittees who do not already own or have access to a computer or other digital device with Internet access would have to ensure that the reporting and notification requirements of the subchapter are effected via the Internet. For persons who already own or have access to a computer or personal digital device and have Internet access, there is no adverse economic cost to comply with the proposed rules. For persons who do not possess a computer or other digital device that can access the Internet, compliance with proposed amendments would require the permittee to either access a public computer with Internet access, purchase or lease hardware and Internet access, or absorb the cost of hiring someone with the equipment and expertise to perform the required actions. Department research indicates that adequate hardware is widely available and can be purchased for approximately $200. Internet access is an additional charge that varies from approximately $15 to $100 per month, depending on the technology and carrier plan resulting in an estimated additional cost of between $380 and $1,400 for the first year ($200, plus the monthly Internet provide costs of $15 - $100/month), but a cost of $180 to $1,200 a year for subsequent years consisting solely of the Internet provider costs.

The department has determined that the cost of hiring professional expertise to submit required information should not exceed a maximum of $90 per hour and probably would be much less, since the expertise required is minimal. Department data indicate that the highest volume of reporting and notification done by any permittee in the previous year consisted of approximately 459 reporting incidents with the department. The department estimates that this represents approximately 9.5 hours of consultant time, yielding a maximum annual expense for compliance of approximately $855.

However, a portion of these costs would be offset by the reduced permit fee. As noted previously, the proposed amendment to §53.14 published elsewhere in this issue of the *Texas Register* would eliminate the $400 permit issuance/renewal fee and all deer breeders will be paying the $200 annual fee. Because permittees who are currently submitting hard-copy documents will receive a discount of 50% on the current $400 annual fee for using the Internet-based reporting system, the department estimates that a portion of the cost of compliance for persons who purchase hardware and Internet access or engage the services of a consultant would be recovered over time.

The department considered several alternatives to achieve the goals of the proposed amendments while reducing potential adverse impacts on small and micro-businesses and persons required to comply. The component of the proposed rules that constitutes an adverse economic impact to small and micro-businesses is the requirement to file all required reports and notifications via the Internet. One alternative the department considered was status quo. This alternative was rejected because one goal of the proposed amendments is to increase the efficiency with which the department administers the deer breeder program, given that additional manpower is not a viable option. The department concluded that requiring all reporting to be completed electronically would be the most effective means to accomplish that goal while reducing the adverse economic impacts to small and micro-businesses.

The department also considered leaving reporting media optional but further reducing fees for those who report electronically. This alternative was rejected because the department has determined that the investment in staff time to continue processing and reconciling hard-copy documents by manual methods in even limited amounts is not justifiable.

The department also considered imposing an increased fee for persons who desire to continue to file reports and notifications manually. This alternative was rejected because it represents a continuing expense to the department that is unjustifiable in light of the small number of permittees that would be affected, and because department staff would still be required to process and reconcile the reporting information manually.

The department also considered the option of requiring permittees who desire to continue to file reports and notifications manually to attend a department-sponsored training course with the goal of improving the timeliness and quality of manual reporting. This alternative was rejected because it represents a continuing expense to the department that is unjustifiable in light of the small number of permittees that would be affected, and because department staff would still be required to process and reconcile the reporting information manually.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government

Code, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677 (e-mail: mitch.lockwood@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §11.027(b), which authorizes the department to establish fees to cover costs associated with the review of applications for permits required by the Parks and Wildlife Code; §43.357, which authorizes the commission to make rules governing the possession of breeder deer; permit applications and fees; reporting requirements; procedures and requirements for the purchase, transfer, sale, or shipment of breeder deer; and §43.359, which requires a deer breeder to maintain an accurate and legible record of all breeder deer acquired, purchased, propagated, sold, transferred, or disposed of and any other information required by the department, and to report that information to the department as the commission by rule may require.

The proposed amendments affect Parks and Wildlife Code, Chapters 11 and 43.

§65.602. Permit Requirement and Permit Privileges; General Provisions.

(a) - (b) (No change.)

(c) Unless specifically provided otherwise in this subchapter or the conditions of permit, all permit applications, permit renewals, notifications, reporting, and recordkeeping required by this subchapter shall be submitted electronically via the department's Internet-based deer breeder application.

§65.603. Application and Permit Issuance.

(a) - (d) (No change.)

(e) An authorized agent may be added to or deleted from a permit at any time by notifying [~~faxing or mailing an agent amendment form to~~] the department. No person added to a permit under this subsection shall participate in any activity governed by a permit unless that person is listed on an amended permit issued by the department [~~until the department has received the agent amendment form~~].

(f) - (j) (No change.)

§65.605. Holding Facility Standards and Care of Deer.

(a) (No change.)

(b) Immediately [~~A permittee shall notify the department immediately~~] upon discovering the escape of breeder deer from a facility, a permittee shall notify the department. [~~Such notice shall be made on a form provided by the department.~~] The permittee shall have ten days from the date of such report to capture only those breeder deer that are marked in accordance with Parks and Wildlife Code, §43.3561. All recaptured breeder deer must be returned to the facility from which the breeder deer escaped. If after ten days the permittee is unable to capture escaped breeder deer that have been reported in accordance with this subsection, the department may grant an additional five-day period for capture efforts to continue, contingent upon the permittee proving to the department's satisfaction that reasonable efforts were made to effect the capture during the first ten-day period.

§65.608. Annual Reports and Records.

(a) Each deer breeder shall file a legible, completed annual report [~~on a form supplied or approved by the department~~] by not later than May 15 of each year.

(b) - (c) (No change.)

§65.610. Transfer of Deer.

(a) General requirement. No person may remove breeder deer from or accept breeder deer into a permitted facility unless a valid transfer permit [~~on a form provided by the department~~] has been activated as provided in this section.

(b) - (d) (No change.)

(e) Transfer permit.

(1) - (2) (No change.)

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin by phone [~~prior to the transport of any breeder deer~~]; or

(B) utilizing the department's Internet-based deer breeder application. [~~web-based activation mechanism prior to the transport of any breeder deer.~~]

(C) It is an offense for any person to transport a deer under a transport permit unless the person also possesses a confirmation number issued by the department indicating receipt of the notification for that instance of transport.

(4) (No change.)

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be[:]

[~~(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or~~]

[~~(B)~~] completed and submitted to the department. [~~using the department's web-based permit-completion mechanism.~~]

(6) (No change.)

(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 69. RESOURCE PROTECTION
SUBCHAPTER H. ISSUANCE OF MARL, SAND, AND GRAVEL PERMITS

31 TAC §69.121

The Texas Parks and Wildlife Department proposes an amendment to §69.121, concerning Prices.

The proposed amendment would create a mechanism for the department to impose penalties and interest on permittees who are delinquent in the payment of royalties or the submission of reports or documents or for the submission of incorrect reports, affidavits, or documents. The proposed amendment would stipulate that any royalty not paid when due or any required affidavit, report, or document not submitted when due would be delinquent and subject to penalties if not paid or corrected within 30 days of notification by the department. For delinquent royalty payments, the penalties would consist of 10% of the delinquent amount or $100, whichever is greater, per month. For delinquent or incorrect reports and documents, the penalty would consist of $100 per month per document, affidavit, or report. The proposed amendment also would require the payment of interest on delinquent royalties at the rate of 12% per year (simple interest), beginning 31 days after the due date of the royalty payment.

In 2011, the department conducted an internal audit of the sand and gravel program's business model and determined that permittees were substantially noncompliant with regulatory deadlines for the submission of royalty payments and reports. This finding was also identified in a 2009 audit. When royalty payments are not timely remitted, the department is denied the full use and benefit of funds that are due. When required affidavits, reports and other documents are incorrect or not timely filed, department staff must expend additional effort to rectify the deficiency. The department therefore believes it is appropriate to promulgate rules to create a monetary penalty that accrues in value the longer the deficiency exists. The department based the structure of the proposed rule on the provisions used by the General Land Office to calculate penalty and interest payments with respect to oil and gas royalties paid to the state under the provisions of 31 TAC §9.51, concerning Royalty and Reporting Obligations to the State, and selected the $100 value as an amount that would be likely to encourage prompt compliance with the provisions of the subchapter.

Tom Heger, Sand and Gravel Permit Program Administrator, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the rule. The department cannot predict the magnitude or frequency of payment or reporting delinquencies; however, the implications will be positive for the state, since the proposed rule would increase the penalties for delinquent payments and reports and require interest to be paid on outstanding balances.

There will be no fiscal implications for other units of state or local government.

Mr. Heger also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that recoup the department's cost to administer the program and protect the public fresh water resources of the state.

There will be an adverse economic effect on persons required to comply with the rule as proposed, but the department notes that the rule would not apply to any person who complies with the payment and reporting requirements of the subchapter. However, persons who are delinquent in submission of royalty payments or reports will owe additional charges as set forth in the rule.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The proposed amendment affects individuals who are delinquent in submitting required payments and/or reports or who submit incorrect reports. The magnitude of such adverse economic impacts is dependent on the number of violations and the length of time that elapses between notification and resolution; therefore, it is impossible to calculate a meaningful estimate of potential adverse economic impacts related to the payment of penalties and/or interest. The department notes, however, that permittees who comply with the rule as proposed and timely submit documentation and pay royalties will experience no adverse economic impact related to penalties and interest.

The department considered several alternatives to achieve the goals of the proposed amendment while reducing potential adverse impacts on small and micro-businesses and persons required to comply. One alternative the department considered was status quo. This alternative was rejected because the goal of the proposed amendment is to provide an incentive for permittees to timely submit required payments and reports, which represents a cost savings to the department both in the form of staff time spent attempting to rectify delinquencies and inaccurate reports, as well as in allowing the full use and benefit of royalty payments The department concluded that these considerations outweigh the adverse economic impacts to small and micro-businesses and persons required to comply.

The department also considered increasing the penalties by a lesser amount. This alternative was rejected because a lesser amount is not believed to provide a sufficient incentive for compliance and the $100 value will allow the department to recoup the administrative cost of reconciling delinquencies.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Tom Heger, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4583 (e-mail: tom.heger@tpwd.state.tx.us).

The amendment is proposed under authority of Parks and Wildlife Code, Chapter 86, which authorizes the commission to adopt rules to govern the pricing of and terms for payment for substrate materials and any other matter necessary for the administration of the chapter.

The proposed amendments affect Parks and Wildlife Code, Chapter 86.

§69.121. Prices.

(a) The commission, with the approval of the governor, establishes a minimum royalty of $.20 ton for sedimentary materials. The permittee shall pay the minimum royalty or a percent royalty of 6.25% on the average selling price per ton sold calculated on a monthly basis, whichever is higher. The percent royalty shall increase to 8.0% on September 1, 1996.

(1) Where the permittee uses a floating dredge and barge or does not have access to a scale, measurement of materials sold may be made in cubic yards and converted into tons according to industry standard prior to payment.

(2) Payment for materials dredged solely for personal use may be based on the minimum royalty.

(3) Penalties and interest on delinquencies.

(A) Penalties. Any royalty not paid when due, or any required affidavit, report, or document not submitted when due, is delinquent and penalties as provided in this paragraph shall be assessed. The penalties prescribed by this paragraph shall be assessed beginning on the 31st day following the due date. Payments remitted before the 31st day are not subject to the provisions of this paragraph.

(i) For royalties due after the effective date of this section, the department shall add a penalty of 10% of the delinquent amount or $100, whichever is greater, to any royalty which is more than 30 days delinquent. An additional penalty of 10% of the amount owed shall be assessed for each 30-day period that the royalty payment or portion of the royalty payment is outstanding.

(ii) For each report, affidavit, or document that is delinquent or incorrect, a penalty of $100 shall be assessed. An additional penalty of $100 per affidavit, report, or document that is delinquent or incorrect shall be assessed for each 30-day period that each affidavit, report, or document remains delinquent or is not corrected.

(B) Interest. Any royalty not paid is delinquent and shall accrue interest as provided in this subparagraph.

(i) Interest shall accrue on all delinquent royalties at the rate of 12% per year (simple interest).

(ii) Interest shall begin to accrue 31 days after the due date.

(b) The commission, with approval of the governor, establishes a price of $1.25 per cubic yard on all grades of shell removed from state-owned submerged tidelands. The price of shell will hereafter be adjusted semiannually, starting October 1, 1981, to reflect any increase or decrease (percent of change) in the Consumer Price Index of retail sales as prepared by the Bureau of Labor Statistics, U.S. Department of Labor (using the National Consumer Price Index, all urban consumers, 1967 equals 100) except that any adjustment for the six-month period starting October 1, 1981, will be based upon the Consumer Price Index statistics compiled for the six months ending June 30, 1981, and each succeeding six-month period will be adjusted in the same manner in order to provide permittees advanced notice of price adjustments, and except that the price of shell per cubic yard will be rounded off to the nearest whole cent and will not be adjusted in any six-month period to less than the base price of $1.25 per cubic yard as established in this section.

(c) In addition, 5.0% of all shell dredged from state-owned submerged tidelands will be delivered to points designated by the department in Texas bays and spread at permittee's expense for reef enhancement. Except that when permittee is required to deliver and spread shell at a point greater than 50 statute miles (computed using the nearest water route through public navigational channels) from the dredge site, the director is authorized to adjust the amount of shell permittee is required to deliver and spread to a quantity less than 5.0% in order to offset permittee's increased delivery cost for the distance over 50 miles. Permittee will not be required to pay for the shell used for reef enhancement.

(d) The department's actual cost of monitoring the dredging operations from state-owned submerged tidelands, not to exceed $50,000 per year, will be assessed against each permittee in proportion to the quantity (percentage of the total) shell removed by each permittee; provided however the maximum monitoring cost of $50,000 will be adjusted each fiscal year using the Consumer Price Index (CPI-U) for the preceding 12-month period except that in no event will the maximum monitoring cost be adjusted below $50,000. The director is authorized to determine the methods and terms for payment of the monitoring cost.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206324
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 389-4775

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 518. GENERAL PROCEDURES
SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

31 TAC §518.5

The Texas State Soil and Water Conservation Board (agency) proposes an amendment to §518.5, concerning Historically Underutilized Business Program.

The amendment to §518.5 adds the references "In accordance with Texas Government Code §2161.003" and "TAC Part 1" to the rule. The amendment is being made to make the rule compatible with statutes and rules of the Comptroller of Public Accounts.

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of administering the amendment as proposed.

Mr. Zajicek has also determined that for the first five-year period the amendment is in effect, the public benefit anticipated as a result of administering the amendment will be a correctly referenced rule. There will be no effect on small businesses. There

is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, extension 231.

The amendment is proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code, which authorizes the agency to adopt reasonable rules that are necessary to carry out the provisions of that chapter.

No other statutes, articles, or codes are affected by this proposal.

§518.5. Historically Underutilized Business Program.

In accordance with Texas Government Code §2161.003, the [~~The~~] board adopts by reference the rules of the Comptroller of Public Accounts in 34 TAC Part 1, [~~Texas Administrative Code~~] Chapter 20, Subchapter B, (relating to [~~§§20.11 - 20.28, as amended, concerning~~] Historically Underutilized Business Program). [~~Copies of the above cited rules, as amended, are filed at the agency headquarters, located at 4311 South 31st Street, Suite 125, Temple, Texas.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206327
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: January 20, 2013
For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.41

The Comptroller of Public Accounts proposes an amendment to §5.41, concerning payroll requirements. The proposed amendment removes requirements now covered in other rules, deletes archaic requirements and conforms the rule to current statutory requirements. Subsection (b) is amended to delete outdated requirements. Subsection (r) regarding lump sum vacation pay is deleted because it is now addressed in §5.43. Subsection (s) for lump sum payment of vacation and sick pay is removed since it is now covered by §5.44; and subsection (t) related to hazardous duty pay is deleted since it is now addressed by §5.39.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule language to current statutory language and current practice. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Lisa Nance, Manager, Fiscal Systems Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Government Code, §659.004 and §2101.0376, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Government Code, Title 6 and Title 10.

The amendment implements Government Code, §659.004 and §2101.0376.

§5.41. Payroll Requirements.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appropriation year--The year that the legal authorization for the charge was granted by the legislature. Multiple appropriation year activity may occur within a single fiscal year [~~accounting period beginning on September 1st and ending the following August 31st~~].

(2) Casual or task employee--An individual who is employed by an institution of higher education for a short time period or a specific task.

(3) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

[~~(3) Document--Has the meaning assigned to "voucher."~~]

[~~(4) FACTS--The financial accounting and control for the Texas system.~~]

[~~(5) FACTS format--The FACTS layout that a state agency uses to submit payroll vouchers to the comptroller.~~]

[~~(6) Fiscal year--Has the meaning assigned to "appropriation year."~~]

(4) [~~(7)~~] FLSA--The Fair Labor Standards Act of 1938.

(5) [~~(8)~~] GAA--The General Appropriations Act.

(6) [~~(9)~~] HRIS--The human resource information system maintained by the Comptroller of Public Accounts. It captures personnel and payroll information submitted by institutions of higher education and locally funded agencies.

[~~(10) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.~~]

(7) [~~(11)~~] Institution of higher education--Has the meaning assigned by [~~the~~] Education Code, §61.003, except that the term does not include a public junior college.

[(12) May not--A prohibition. The term does not mean "might not" or its equivalents.]

(8) [(13)] Payroll document--The type of document that a state agency submits to the comptroller in the required [USAS] format when requesting payment of the compensation of state employees or certain other types of payments as required by the comptroller.

(9) [(14)] Payroll information--Information concerning the type and amount of compensation earned by a state employee, deductions from the compensation earned by the employee, and the source of funding for the payment of compensation to the employee. The term includes other types of information that the comptroller requires to be reported as payroll information.

[(15) Payroll voucher--The type of voucher that a state agency submits to the comptroller in the FACTS format when requesting payment of the compensation of state employees or certain other types of payments as required by the comptroller.]

(10) [(16)] Personnel information--Information about a state employee's job, compensation, or personal characteristics. The term includes other types of information that the comptroller requires to be reported as personnel information. Personnel information includes all information related to the individual as an employee and must support statewide reporting, such as for veteran's preference and Equal Employment Opportunity type information.

(11) [(17)] Qualified deferred compensation plan--A deferred compensation plan that is governed by [the] Internal Revenue Code of 1986, §401(k).

(12) [(18)] State agency--A department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes the State Bar of Texas, the Board of Law Examiners, and an institution of higher education.

(13) [(19)] State employee--An officer or appointed officer of a state agency. The term includes a full-time or part-time employee or officer; an hourly employee; a temporary state employee; [Includes a state officer,] a casual or task employee;[, and] an individual whose employment with a state agency is conditional on the individual being a student; a line item exempt employee; or an employee not covered by the Position Classification Act; an employee that works in a nonacademic position at a state institution of higher education and any other individual to whom wages are paid by a state agency or institution of higher education.

(14) [(20)] USAS--The uniform statewide accounting system maintained by the Comptroller of Public Accounts. It is the official accounting system for the State of Texas.

(15) [(21)] USAS format--The USAS layout that a state agency uses to submit payroll documents to the comptroller.

(16) [(22)] USPS--The uniform statewide payroll/personnel system maintained by the Comptroller of Public Accounts. It is used as the internal personnel and payroll system by user agencies.

(17) Calendar month--The period from the first day through the last day of January, February, March, April, May, June, July, August, September, October, November or December.

(18) Workday--Any day except Saturday and Sunday. The term includes a state or national holiday under GAA or Government Code, §§662.001 - 662.010.

(19) SPRS--The standardized payroll/personnel system maintained by the Comptroller of Public Accounts. It captures personnel and payroll information submitted by state agencies that report their data to SPRS.

(20) CAPPS--The centralized accounting, payroll and personnel system maintained by the Comptroller of Public Accounts or a version held elsewhere as authorized by the Comptroller of Public Accounts. The payroll and personnel components are used by state agencies that use CAPPS as their internal system and it submits personnel and payroll information to SPRS.

(21) Standard work schedule--A schedule with the number of workdays and hours per month as published annually by the Comptroller of Public Accounts. It represents the number of workdays and hours per month that a Monday through Friday, 40 hour per week employee would work.

(22) Non-standard work schedule--A schedule other than a standard work schedule.

(23) Locally funded agencies--State agencies whose funds are held in banks outside of the state treasury department.

[(23) Voucher--The paper or electronic request that a state agency submits to the comptroller for the purpose of requesting the comptroller to make a payment on the agency's behalf.]

[(24) Workday--Any day that is not Saturday, Sunday, or a state or national holiday under the GAA or the Government Code, §§662.001-662.010].

(b) Required submission of payroll documents.

(1) A state agency must submit a payroll document to the comptroller if the agency is requesting reimbursement for the agency's payment of compensation to its employees. The payroll document must be in proper USAS format.

(2) A state agency may electronically submit a payroll detail to the comptroller according to the comptroller's requirements.

[(b) Content and format requirements for payroll vouchers and documents.]

[(1) Required submission of payroll vouchers. A state agency must submit a payroll voucher instead of a payroll document to the comptroller if the agency:]

[(A) does not use USPS; and]

[(B) is not requesting reimbursement for the agency's payment of compensation to its employees.]

[(2) Required submission of payroll documents. A state agency must submit a payroll document instead of a payroll voucher to the comptroller if the agency:]

[(A) uses USPS; or]

[(B) is requesting reimbursement for the agency's payment of compensation to its employees.]

[(3) Content of payroll vouchers. A payroll voucher that a state agency submits to the comptroller must state, provide, or list:]

[(A) the appropriate transaction codes;]

[(B) the agency's correct name and number;]

[(C) the appropriate voucher type;]

[(D) whether the voucher is submitted on tape or paper;]

[(E) the correct tape batch number, if the voucher is submitted on tape;]

[(F) the correct tape volume number, if the voucher is submitted on tape;]

[(G) the agency voucher number;]

[(H) the correct payroll ending date;]

[(I) the tax deposit date;]

[(J) the total amount of the voucher;]

[(K) the numbers of the funds from which the payments resulting from the voucher will be made;]

[(L) the correct fiscal years that will be charged for the payments resulting from the voucher;]

[(M) the appropriate cost center numbers;]

[(N) the appropriate comptroller object codes;]

[(O) the amount of payments for each combination of cost center number and comptroller object code;]

[(P) that the payroll voucher is correct and unpaid;]

[(Q) that the payments are not prohibited by the Texas Constitution and do not violate any statutory requirements or conditions;]

[(R) a certification that if the GAA requires the filing of a salary supplementation report with the comptroller and the secretary of state, the report has been filed; and]

[(S) an approval of the voucher according to the Government Code, §403.071 and §2103.004.]

[(4) Content of payroll documents. A payroll document that a state agency submits to the comptroller must state, provide, or list:]

[(A) the document date, which is the payroll period ending date;]

[(B) the effective date, which is the date the document processes in USAS;]

[(C) the due date, which is:]

[(i) the date printed on the warrants resulting from the document; or]

[(ii) the date that funds are posted to the payees' bank accounts if the payments are made by electronic funds transfer;]

[(D) the document and suffix number;]

[(E) the correct number of the agency;]

[(F) the appropriate transaction code;]

[(G) the correct appropriation years that will be charged for the payments resulting from the document;]

[(H) a valid program cost account or index number;]

[(I) the appropriate comptroller object codes;]

[(J) the amount of each transaction included in the document;]

[(K) the payment distribution type for each transaction included in the document;]

[(L) the document amount;]

[(M) the correct name of the agency;]

[(N) the payee identification number and name of each individual or entity that is receiving a payment as a result of the document;]

[(O) the correct number of each appropriation and fund that is being used to support payments as a result of the document.]

[(c) Payroll details.]

[(1) Required submission of payroll details. Except as provided in paragraph (2) of this subsection, a state agency must attach one copy of the payroll detail to each payroll voucher.]

[(2) Electronic submission of payroll details. A state agency may electronically submit a payroll detail to the comptroller according to the comptroller's requirements.]

[(3) Content of payroll details. A payroll detail for a payroll voucher must:]

[(A) specify the appropriate transaction codes;]

[(B) specify the payroll period ending date;]

[(C) specify the numbers of the funds from which the payments resulting from the voucher will be made;]

[(D) have accurate information in the detail, address, and, where applicable, the "C" lines for each payment record;]

[(E) specify the line numbers;]

[(F) specify the correct fiscal years that will be charged for the payments resulting from the voucher;]

[(G) provide the appropriate cost center numbers;]

[(H) list the appropriate comptroller object codes;]

[(I) provide the payee identification number and name of each individual or entity who is receiving a payment as a result of the voucher;]

[(J) provide the gross and net amount for each payment record;]

[(K) provide the appropriate plan identifier and deduct type for each payment record that involves:]

[(i) a deduction to a qualified deferred compensation plan;]

[(ii) the repayment of a loan made under a qualified deferred compensation plan; or]

[(iii) both a deduction to and the repayment of a loan made under a qualified deferred compensation plan;]

[(L) specify the amount and payee of each payroll deduction resulting from the voucher; and]

[(M) specify for each payment record the amount deducted to or the amount of the repayment of a loan under a qualified deferred compensation plan, if any.]

(c) [(d)] Deadline for receipt of payroll [vouchers and] documents.

(1) Generally. Except as provided in paragraph (2) of this subsection, a payroll [voucher or] document must be received by the comptroller, according to the comptroller's requirements, not later than the seventh workday before payday. This [subparagraph] applies regardless of[:]

[(A)] how often a state agency pays its employees.[; or]

[~~(B) whether the agency submits a voucher or document electronically or on paper.~~]

(2) Exceptions.

(A) If a state agency wants to pick up its warrants before payday under a bailment contract the agency has executed with the comptroller, then the agency's payroll [~~voucher or~~] document must be received not later than the seventh workday before the day on which the agency wants to pick up the warrants.

(B) A payroll [~~voucher or~~] document that is submitted by a state agency that uses USPS or uses CAPPS or reports to SPRS must be received by the comptroller, according to the comptroller's requirements, not later than the fourth workday before payday to ensure direct deposit of net pay.

(d) [~~(c)~~] Supplemental payroll [~~vouchers and~~] documents.

(1) When allowed. A state agency may submit a supplemental payroll [~~voucher or~~] document to the comptroller if a change occurs between the agency's submission of its regular payroll [~~voucher or~~] document and the end of the month.

[~~(2) Required explanation. When a state agency submits a supplemental payroll voucher or document to the comptroller, the agency must briefly explain on the voucher or document the need for the supplemental payroll.~~]

(2) [~~(3)~~] Adjustments in compensation. When a change results in a state agency owing money to a state employee, the agency should adjust the employee's compensation for the following month instead of submitting a supplemental payroll if the delay would not cause hardship to the employee.

(e) [~~(f)~~] Non-regular payments. A state agency may make a payment to a state employee for other than the employee's regular compensation on a regular payroll [~~voucher or~~] document. The agency must select the proper comptroller object code for the payment.

(f) [~~(g)~~] Cancellations of payments of compensation.

(1) Cancellations of warrants. When a state agency needs to cancel a payroll warrant, the agency must follow [~~properly complete~~] the comptroller's warrant cancellation procedures. [~~voucher form. After completing the form, the agency must forward the form and the warrant, with "CANCELED" clearly written on the warrant, to the comptroller's claims division for processing. A state agency may not mix a payroll warrant cancellation with cancellations of non-payroll warrants on a warrant cancellation voucher form.~~]

(2) Cancellation of electronic funds transfers. When a state agency needs to cancel a payment of compensation via the comptroller's electronic funds transfer system, the agency must follow the procedures specified by the comptroller.

(3) Issuance of new warrants. When a state agency needs to issue a new payroll warrant after canceling the original payroll warrant, the agency must follow the comptroller's procedures for supplemental payrolls.

(g) [~~(h)~~] Payroll conversions. In early September of each year, state agencies that are subject to the Position Classification Act must furnish payroll conversion information to the comptroller and the state auditor according to their guidelines. Although the comptroller sends the guidelines to each state agency once each year, the guidelines are always available from the comptroller upon request.

[~~(i) Electronic submission of payroll vouchers and documents. The comptroller prefers for each state agency to electronically submit its payroll vouchers and documents to the comptroller. The electronic submission of a payroll voucher or document must comply with the comptroller's requirements.~~]

(h) [~~(j)~~] Reporting of personnel information to HRIS.

(1) Applicability. This subsection applies to a state agency only if it does not use USPS, CAPPS or report to SPRS.

(2) Reporting requirements.

(A) A state agency shall report personnel information to HRIS if:

(i) a state employee is added to or removed from the agency's payroll;

(ii) the agency changes a state employee's compensation rate;

(iii) the agency changes a state employee's classification or job title;

(iv) the legal name of a state employee of the agency changes;

(v) the social security number of a state employee of the agency changes;

(vi) a state employee of the agency goes on leave without pay or faculty development leave;

(vii) the home address of a state employee of the agency changes;

(viii) deduction information concerning a state employee of the agency changes, if HRIS requires reporting of that information; or

(ix) other job or descriptive information concerning a state employee of the agency changes, if HRIS requires reporting of that information.

(B) A state agency shall ensure that HRIS receives its report not later than the seventh day of the month after the month in which the change or event occurs that triggers the requirement for the agency to file the report.

(C) A report to HRIS under this paragraph must be made in the manner, frequency, and form required by the comptroller.

(i) [~~(k)~~] Reporting of payroll information to HRIS.

(1) Applicability. This subsection applies to:

(A) an institution of higher education that does not use USPS, CAPPS or report to SPRS;

(B) the State Bar of Texas[~~, but only until it begins using USPS~~]; and

(C) the Board of Law Examiners[~~, but only until it begins using USPS~~].

(2) Reporting requirements.

(A) A state agency shall report payroll information to HRIS.

(B) A state agency's report of payroll information must be complete not later than the seventh day of the month following the month covered by the report. A report is complete only if:

(i) it encompasses all the pay periods that end in the month covered by the report; and

(ii) HRIS receives it by the deadline.

(C) A report to HRIS under this paragraph must be made in the manner, frequency, and form required by the comptroller.

(j) [~~(l)~~] Reporting errors. If the comptroller detects an error in a state agency's report of personnel or payroll information, then the comptroller shall provide a description of the error to the agency. The agency shall then correct the error according to the comptroller's requirements. The agency must correct the error not later than the seventh day of the month following the month in which the agency receives a description of the error.

(k) [~~(m)~~] Additional mail codes. A state agency may establish an additional mail code for a state employee only by submitting the proper application to the comptroller's Fiscal Management [~~claims~~] division.

(l) Reporting of personnel information to USPS, CAPPS or SPRS.

(1) Applicability. This subsection applies to a state agency only if it does not report to HRIS.

(2) Reporting requirements.

(A) A state agency shall be considered to have reported personnel information to USPS, CAPPS or SPRS if:

(i) a state employee is added to or removed from the agency's payroll;

(ii) the agency changes a state employee's compensation rate;

(iii) the agency changes a state employee's classification or job title;

(iv) the legal name of a state employee of the agency changes;

(v) the social security number of a state employee of the agency changes;

(vi) a state employee of the agency goes on leave without pay or faculty development leave;

(vii) the home address of a state employee of the agency changes;

(viii) deduction information concerning a state employee of the agency changes; or

(ix) other job or descriptive information concerning a state employee of the agency changes.

(B) A state agency must ensure that the information is provided in the manner, frequency, and form required by the comptroller.

(m) Reporting of payroll information to USPS, CAPPS or SPRS.

(1) Applicability. This subsection applies to a state agency that does not report to HRIS.

(2) Reporting requirements.

(A) A state agency shall be considered to have reported payroll information to USPS, CAPPS or SPRS if the agency successfully completes the processing of payroll information.

(B) A state agency's report of payroll information must include any payments of regular salary, twice monthly salary, overtime pay, longevity, benefit replacement pay, lump sum payment of unused vacation and sick leave, emoluments and special pays such as bilingual or fire brigade pay. A report is complete only if:

(i) it encompasses all the pay periods that end in the month covered by the report; and

(ii) the comptroller receives it by the deadline.

(C) Payroll information under this paragraph must be processed in the manner, frequency, and form required by the comptroller.

(D) Reporting errors. If the comptroller detects an error in a state agency's report of personnel or payroll information, then the comptroller shall provide a description of the error to the agency. The agency shall then correct the error according to the comptroller's requirements.

(n) Standard payroll calculation [~~USPS~~].

(1) Exemption. This subsection does not apply to an institution of higher education.

(2) Required use of USPS.

(A) Except as provided in subparagraph (B) of this paragraph, a state agency must use USPS to:

(i) calculate and otherwise generate the agency's payments of compensation to its state employees; and

(ii) maintain the agency's personnel and payroll information.

(B) A state agency is not subject to subparagraph (A) of this paragraph if the comptroller has [~~not yet~~] allowed the agency to report to SPRS or to use the payroll and personnel components of CAPPS. If a state agency is allowed to report to SPRS or to use CAPPS, it must conform to the payroll calculation defined in [~~start using~~] USPS.

(o) Deceased state employees.

(1) Required payees. A state agency must pay the compensation earned by a deceased state employee to the employee's estate unless [~~the~~] Probate Code, §160, or another law authorizes or requires a different payment method.

(2) Additional mail codes. When a state agency pays the estate of a deceased state employee, the agency must establish an additional mail code under the payee identification number of the employee.

(p) Overtime payments.

(1) Generally. A state employee covered by the overtime provisions of the FLSA must be credited or paid for overtime hours worked according to the GAA, the FLSA, and the regulations adopted by the United States Department of Labor under the FLSA. Those regulations and the FLSA prevail over the GAA to the extent of conflict, if any.

(2) Method for making overtime payments. A state agency may pay overtime on any payroll [~~voucher or~~] document submitted to the comptroller, including a supplemental payroll [~~voucher or~~] document.

(q) Payments of compensation for working partial months.

(1) State employees paid once each month.

(A) This paragraph applies only to a state employee who is paid once each month.

(B) A state agency must calculate the amount of compensation a state employee is entitled to receive for working less than a full month by:

(i) calculating the employee's hourly rate of pay according to the comptroller's requirements [~~to the GAA~~]; and

(ii) multiplying the employee's hourly rate of pay by the number of hours worked to determine the correct amount of compensation.

(C) Subparagraph (B) of this paragraph also applies to the compensation paid to a state employee who is on leave without pay for less than an entire calendar month.

(2) State employees paid twice each month.

(A) This paragraph applies only to a state employee who is paid twice each month.

(B) This subparagraph applies to a state employee who does not work all the available hours in the first half of a month but works all the available hours in the second half of the month.

(i) The total compensation that must be paid to a state employee for an entire month is equal to the product of:

(I) the hours worked in the month by the employee; and

(II) the employee's hourly rate for the month [~~as~~] calculated according to the comptroller's requirements [~~GAA~~].

(ii) The amount of compensation that must be paid to a state employee for services provided during the first half of a month is equal to the product of:

(I) the hours worked in that half of the month by the employee; and

(II) the employee's hourly rate for the month [~~as~~] calculated according to the comptroller's requirements [~~GAA~~].

(iii) The amount of compensation that must be paid to a state employee for services provided during the second half of a month equals the difference between:

(I) the total compensation that must be paid to the employee for the entire month as determined under clause (i) of this subparagraph; and

(II) the compensation that must be paid to the employee for services provided during the first half of the month as determined under clause (ii) of this subparagraph.

(C) This subparagraph applies to a state employee who works all the available hours in the first half of a month but does not work all the available hours in the second half of that month.

(i) The total compensation that must be paid to a state employee for an entire month is equal to the product of:

(I) the hours worked in the month by the employee; and

(II) the employee's hourly rate for the month [~~as~~] calculated according to the comptroller's requirements [~~GAA~~].

(ii) The amount of compensation that must be paid to a state employee for services provided during the first half of a month equals 50% of the employee's compensation for the month.

(iii) The amount of compensation that must be paid to a state employee for services provided during the second half of a month equals the difference between:

(I) the total compensation that must be paid to the employee for the entire month as determined under clause (i) of this subparagraph; and

(II) the compensation that must be paid to the employee for services provided during the first half of the month as determined under clause (ii) of this subparagraph.

~~[(r) Lump sum payments for accrued vacation time.]~~

~~[(1) Special definition. In this subsection, "state employee" has the meaning assigned by the Government Code, §661.061(2).]~~

~~[(2) Entitlement to payments. A state employee who separates from state employment is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation.]~~

~~[(3) Governing law. A payment under this subsection must be made according to the Government Code, Chapter 661, Subchapter C.]~~

~~[(4) Payroll details. The payroll detail submitted with a payroll voucher to make a payment to a state employee under this subsection must include:]~~

~~[(A) the employee's rate of pay;]~~

~~[(B) the date of separation from state employment; and]~~

~~[(C) the number of days and hours of accrued vacation time, not including hours for authorized national and state holidays.]~~

~~[(5) Appropriation year determination. A state agency must charge a payment under this subsection to an applicable appropriation for the payment of compensation. The payment must be charged to the appropriation year in which the state employee's separation from service becomes effective.]~~

~~[(6) Tax and retirement withholding from payments.]~~

~~[(A) A payment under this subsection is subject to federal income tax withholding and withholding under the Federal Insurance Contributions Act.]~~

~~[(B) A payment under this subsection:]~~

~~*[(i)* is not subject to deductions for employee retirement contributions to the optional retirement program or the Teacher Retirement System of Texas; and]~~

~~*[(ii)* according to the Employees Retirement System of Texas, is not subject to deductions for employee contributions to that system.]~~

~~[(s) Lump-sum payments for accrued vacation leave and sick leave upon the death of a state employee.]~~

~~[(1) Special definition. In this subsection, "state employee" has the meaning assigned by the Government Code, §661.031(2).]~~

~~[(2) Entitlement to payments. Upon the death of a state employee, the employing state agency shall pay the employee's estate for the employee's vacation leave and sick leave balances according to the limits, if any, established by the GAA. Notwithstanding the GAA, the payment may not be for more than:]~~

~~[(A) all of the employee's accumulated vacation leave; and]~~

~~[(B) one-half of the employee's accumulated sick leave.]~~

~~[(3) Governing law. A payment under this subsection must be made according to the Government Code, Chapter 661, Subchapter B.]~~

~~[(4) Payroll details. The payroll detail submitted with a payroll voucher to pay accrued vacation leave and sick leave to a deceased employee's estate must include:]~~

[(A) the employee's rate of pay at the time of death;]

[(B) the date of separation from state employment;]

[(C) the number of days and hours of accrued vacation time, not including hours for authorized national and state holidays; and]

[(D) the number of days and hours of accrued sick leave.]

[(5) Appropriation year determination. A state agency must charge a lump-sum payment for accrued vacation leave and sick leave to the agency's appropriation for the payment of compensation. The payment must be charged to the appropriation year in which the state employee's death occurred.]

[(6) Retirement withholding from payments. A lump-sum payment for accrued vacation leave and sick leave upon the death of a state employee:]

[(A) is not subject to deductions for employee retirement contributions to the optional retirement program or the Teacher Retirement System of Texas; and]

[(B) according to the Employees Retirement System of Texas, is not subject to deductions for employee retirement contributions to that system.]

[(7) Tax withholding from the sick leave portion. The sick leave portion of a lump-sum payment for accrued vacation leave and sick leave upon the death of a state employee is not subject to federal income tax withholding or withholding under the Federal Insurance Contributions Act.]

[(8) Tax withholding from the vacation leave portion. The vacation leave portion of a lump-sum payment for accrued vacation leave and sick leave upon the death of a state employee:]

[(A) is not subject to federal income tax withholding;]

[(B) is subject to withholding under the Federal Insurance Contributions Act if the payment occurs during the calendar year of the employee's death; and]

[(C) is not subject to withholding under the Federal Insurance Contributions Act if the payment occurs after the calendar year of the employee's death.]

[(t) Hazardous duty pay. The statute governing hazardous duty pay is the Government Code, §659.062.]

(r) [(u)] Payroll deductions.

(1) Special definitions. The following words and terms, when used in this subsection, shall have the following meanings unless the context clearly indicates otherwise.

(A) Certified state employee organization--A state employee organization that the comptroller has certified according to §5.46 of this title (relating to Deductions for Paying [Certain] Membership Fees to Employee Organizations).

(B) State agency--

(i) a board, commission, department, office, or other agency that is in the executive branch of state government and that was created by the constitution or a statute of the state, including an institution of higher education as defined by [the] Education Code, §61.003;

(ii) the legislature or a legislative agency; or

(iii) the supreme court, the court of criminal appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

(2) Statutory limitation. [The] Government Code, §659.002, prohibits a state agency from making a deduction from the compensation paid to an employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

(3) List of authorized deductions. The deductions authorized by law are:

(A) court-ordered deductions under [the] Bankruptcy Code, Chapter 13;

(B) deductions required by levies imposed by the Internal Revenue Service;

(C) deductions required by payroll deduction agreements between the Internal Revenue Service and state employees if the agreements are legally binding on employing state agencies;

(D) federal income tax withholding;

(E) deductions required by the Federal Insurance Contributions Act, which includes social security and Medicare withholding;

(F) income tax deductions required by states other than Texas or by local governments outside Texas in which state employees live and work;

(G) contributions to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the optional retirement program, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two;

(H) fees charged to state employees by their employing state agencies for complying with court-ordered child support deductions from the employees' compensation;

(I) court-ordered child support deductions;

(J) extra federal income tax withholding;

(K) deferrals to and repayments of loans from the qualified deferred compensation plan;

(L) deductions required by a valid assignment, transfer, or pledge of compensation as security for an indebtedness under [the] Education Code, §51.934;

(M) health benefits plan deductions, cafeteria plan deductions, and other deductions authorized by [the] Insurance Code, Chapter 1551 [Article 3.50-2], Texas Employees [Uniform] Group Insurance Benefits Act;

(N) health benefits plan deductions, cafeteria plan deductions, and other deductions authorized by [the] Insurance Code, Chapter 1551 [Article 3.50-3], Texas State College and University Employees Uniform Insurance Benefits Act;

(O) deductions for goods and services provided to employees by the institutional division of the Department of Criminal Justice;

(P) deductions for services provided to state employees of agencies as authorized in statute or the GAA [the Department on Aging, the Commission on Alcohol and Drug Abuse, the Commission for the Blind, the Cancer Council, the Children's Trust Fund of Texas, the Commission for the Deaf and Hearing Impaired, the Interagency Council on Early Childhood Intervention, the Department of Health, the Health and Human Services Commission, the Department of Hu-

~~man Services,~~ ~~the Department of Mental Health and Mental Retardation,~~ ~~the Department of Protective and Regulatory Services,~~ ~~the Rehabilitation Commission,~~ ~~and the Youth Commission~~];

(Q) deferrals to the deferred compensation plans governed by [~~the~~] Internal Revenue Code of 1986, §457;

(R) contributions by employees of the Texas Higher Education Coordinating Board, the Texas Education Agency, the Department of Assistive and Rehabilitative Services [~~Mental Health and Mental Retardation~~], the Department of State Health Services, the Texas Juvenile Justice Department [~~Youth Commission~~], and the governing boards of state-supported institutions of higher education to any investment authorized under [~~the~~] Internal Revenue Code of 1986, §403(b);

(S) deductions to pay membership fees to certified state employee organizations;

(T) service purchase installment deductions for contributing members of the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan I, or the Judicial Retirement System of Texas Plan II;

(U) deductions from the compensation paid to certain faculty members who take English proficiency courses under [~~the~~] Education Code, §51.917;

(V) deductions for contributions to eligible charitable organizations;

(W) deductions for payments to credit unions;

(X) deductions required by federal law for the repayment of guaranteed student loans;

(Y) deductions for savings bond purchases; [~~and~~]

(Z) deductions for supplemental optional benefit programs approved by the Employees Retirement System of Texas under [~~the~~] Government Code, §659.102;

(AA) deductions to make payments under a prepaid tuition contract; and

(BB) deductions for contributions to a qualified football coaches plan.

(s) [~~(v)~~] Garnishments.

(1) Delivery of garnishment notices. A notice to garnish the compensation of a state employee must be delivered directly to the employing state agency.

(2) Garnishment notices for terminated employees. If a state agency receives a garnishment notice for a person no longer employed by the agency, then the agency must:

(A) return the notice to the entity that issued the notice;

(B) inform the entity that the person is no longer employed; and

(C) identify to the entity the retirement system that the entity should contact to seek information about the person's retirement contribution balance.

(3) Compliance with garnishment notices. Upon receipt of a valid garnishment notice, the receiving state agency must:

(A) inform the affected state employee about the notice and the procedures the agency will follow to comply with the notice;

(B) establish a mail code on the comptroller's Texas payee information system for the recipient of the garnishment proceeds unless a payee number has already been designated for all state agencies to use; and

(C) show the garnishment as a miscellaneous deduction on the affected state employee's payroll record.

(4) Effective date of garnishment notices. A garnishment notice takes effect with the first payroll document [~~voucher~~] submitted to the comptroller after the notice is received. Therefore, if a state agency receives a garnishment notice after the agency has submitted a payroll document [~~voucher~~] to the comptroller, the notice does not apply to that document [~~voucher~~].

(t) [~~(w)~~] Refunds of deductions. A state agency may refund amounts previously deducted in error only by using credit amounts in the appropriate deduction column on a payroll [~~voucher or~~] document.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ashley Harden
General Counsel
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SUBCHAPTER E. CLAIMS PROCESSING--PURCHASE VOUCHERS

34 TAC §5.51

The Comptroller of Public Accounts proposes an amendment to §5.51, concerning requirements for purchase documents. The proposed amendment changes the name of the purchase guide from the "Purchase Policies and Procedures Guide" to "eXpendit" and adds the definition of a fiscal year and amends the definition of an appropriation year.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by improving the clarity of the rule's language. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Lisa Nance, Manager of Statewide Fiscal Services, P.O. Box 13528, Austin, Texas 78711.

This amendment is authorized under Government Code, §2155.322, which provides the comptroller the authority to adopt the form or manner that state agencies must use to certify the receipt of goods and services along with the financial information and purchase information provided by the invoice and purchase voucher. It is also authorized under Government Code, §2155.0012, which authorizes the comptroller to adopt

rules to administer purchasing procedures under Chapter 2155 of the Government Code.

The amendment implements Government Code, §403.039 and §403.071.

§5.51. Requirements for Purchase Documents.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Appropriation year--The year that the legal authorization for the charge was granted by the legislature. Multiple appropriation year activity may occur within a single fiscal year.

~~[(1) Appropriation year--The accounting period beginning on September 1st and ending the following August 31st.]~~

(2) Chief administrative officer--The appointed or elected individual who is authorized by law to administer a state agency that is not headed by a governing body or the executive director or other individual with an equivalent title who administers a state agency headed by a governing body.

(3) Comptroller--The comptroller of public accounts for the State of Texas.

(4) Comptroller object code--The four-digit code that indicates in USAS the type of expenditure made.

(5) Delivery date--The date goods are delivered to a state agency.

(6) Governing body--The board, commission, committee, council, or other group of individuals that is collectively authorized by law to administer a state agency.

(7) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(8) Institution of higher education--Has the meaning assigned by Education Code, §61.003.

(9) May not--A prohibition. The term does not mean "might not" or its equivalents.

(10) Non-payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to post or correct certain accounting information in USAS. The term does not include a payment document.

(11) Order date--The date that a state agency enters into a contract for goods or services.

(12) Texas identification number--The 11-digit number that the comptroller assigns to each payee of a warrant issued or electronic funds transfer initiated by the comptroller.

(13) Mail code--The three digit number associated with a Texas identification number that documents disbursement instructions.

(14) Payment document--The paper or electronic document that a state agency submits to the comptroller for the purpose of requesting the comptroller to make one or more payments on the agency's behalf. The term includes a document that uses the appropriated or other funds of a state agency to make a payment to another state agency. The term does not include a non-payment document.

(15) Purchase document--The type of payment document that the comptroller requires a state agency to submit when requesting payment of certain claims against the agency.

(16) Service date--The date the provision of services to a state agency ends.

(17) State agency--A department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of Texas state government, the jurisdiction of which is not limited to a geographical portion of this state. The term includes an institution of higher education.

(18) Payment transaction--A state agency's request to the comptroller for the comptroller to make one payment to one payee on behalf of the agency. A payment document always contains at least one payment transaction or one adjusting entry to a payment transaction.

(19) USAS--The uniform statewide accounting system.

(20) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(b) Submission of purchase documents to the comptroller.

(1) A state agency may submit a purchase document to the comptroller only by submitting the document to USAS.

(2) A state agency must submit a purchase document to USAS electronically unless the comptroller has specifically authorized the agency to submit the document on paper. A state agency may electronically submit a purchase document through on-line, direct entries into USAS or through reporting into USAS by a magnetic media device.

(c) General responsibilities of state agencies and their officers and employees.

(1) The officers and employees of a state agency are responsible for:

(A) being knowledgeable about Texas laws and rules concerning expenditures;

(B) ensuring that the agency's expenditures comply with those laws and rules;

(C) determining the agency's legal authority for making each payment that would result from a purchase document before the document is submitted to the comptroller;

(D) ensuring that for each purchase document, the agency maintains necessary documentation for proving that each payment resulting from the document is legal, proper, and fiscally responsible; and

(E) ensuring that each purchase document complies with the processing requirements of USAS.

(2) An officer or employee of a state agency may not submit a purchase document to the comptroller if the officer or employee has any doubts about the legality, propriety, or fiscal responsibility of any payment that would result from the document.

(3) The chief administrative officer of a state agency is responsible for ensuring that the agency's officers and employees understand and comply with this subsection. However, the chief administrative officer's failure to fulfill this responsibility does not relieve those officers and employees from the obligation to comply.

(4) The comptroller's responsibility to audit a state agency's purchase documents does not relieve the agency's officers and employees from the responsibilities listed in paragraphs (1) - (3) of this subsection. Therefore, those officers and employees may not rely on the comptroller's audit to prevent a questionable payment from being made or to discover or reverse an invalid payment after it has occurred.

(d) Content of purchase documents and payment transactions. For each payment transaction included in a purchase document, the document must specify or contain:

(1) the Texas identification number and mail code of the individual or entity being paid or reimbursed;

(2) the amount of the payment or adjusting entry;

(3) the proper comptroller object code;

(4) the appropriation year to be charged for the payment or adjusting entry;

(5) the agency number of the agency whose funds are being used to make the payment or adjusting entry;

(6) the proper transaction code for crediting or debiting the appropriate general ledger accounts;

(7) the proper program cost account;

(8) the number of the fund from which the payment or adjusting entry will be made;

(9) the number of the appropriation from which the payment or adjusting entry will be made;

(10) the disbursement method for making the payment or adjusting entry;

(11) the service or delivery date, which must be entered into the service date field;

(12) the order date, which must be entered into the document date field;

(13) the approval and certification of the document; and

(14) any other information deemed necessary by the comptroller.

(e) Supporting documentation for purchase documents.

(1) The comptroller may require a state agency to make available to the comptroller documentation to support the legality and fiscal responsibility of each payment that results from a purchase document if the payment is made out of the agency's funds. Supporting documentation must be made available whenever:

(A) the comptroller's purchase guide, eXpendit, [~~Purchase Policies and Procedures Guide~~] or a successor publication specifically requires the documentation to be made available; or

(B) the comptroller notifies the agency that the documentation must be made available.

(2) Supporting documentation must be made available to the comptroller in the manner required by the comptroller. The comptroller may require the documentation to be made available during a post-payment audit, a prepayment audit, or at any other time.

(3) The types of supporting documentation that the comptroller may require include purchase orders, requisitions, contracts, invoices, and receipts.

(4) A state agency must maintain documentation in its files to support the legality and fiscal responsibility of each payment resulting from a purchase document if the payment is made out of the agency's funds. The documentation must be maintained even if the comptroller does not require the agency to make it available to the comptroller.

(5) A state agency's supporting documentation must satisfy all the following requirements.

(A) The supporting documentation for a purchase document must be maintained in agency files at least until the end of the second fiscal [~~appropriation~~] year after the fiscal [~~appropriation~~] year in which the document is processed by USAS.

(B) This subparagraph applies to a purchase document only if the document contains only one payment transaction. Supporting documentation must be cross-referenced to the purchase document that the documentation supports. This cross-reference must consist of the document's USAS document key. A purchase document's USAS document key consists of the document agency, the document number, and the fiscal [~~appropriation~~] year during which the document was initiated. All supporting documentation for a particular purchase document must be grouped together.

(C) This subparagraph applies to a purchase document only if the document contains more than one payment transaction. Supporting documentation must be cross-referenced to the purchase document and payment transaction that the documentation supports. The cross-reference to the purchase document must consist of the document's USAS document key. A purchase document's USAS document key consists of the document agency, the document number, and the fiscal [~~appropriation~~] year during which the document was initiated. The cross-reference to the purchase transaction consists of the transaction's suffix number. All supporting documentation for a particular payment transaction must be grouped together.

(D) The state agency whose funds are used to make a payment is responsible for maintaining the supporting documentation for the payment.

(6) When the comptroller requires a state agency to make supporting documentation available to the comptroller, the agency is solely responsible for complying with this requirement. The comptroller is not required to search the agency's files for the documentation, determine which documentation corresponds with which purchase documents or payment transactions, or otherwise organize or sort the documentation. If the agency does not make supporting documentation for a particular purchase document or payment transaction available to the comptroller according to the comptroller's requirements, then the comptroller may reject the document or transaction or deem the payment resulting from the document or transaction to be unsubstantiated or erroneous.

(7) This subsection also applies to any supporting documentation that a state agency maintains electronically.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ashley Harden
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34 TAC §5.56

The Comptroller of Public Accounts proposes an amendment to §5.56, concerning appropriation year determination. The pri-

mary purpose of the amendment is to update the section in non-substantive ways, including clarifying existing language.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing additional clarification for the rule's provisions. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Lisa Nance, Manager of Statewide Fiscal Services, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Government Code, §2101.035(a), which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system. The amendment is also proposed under Government Code, §2113.205(d), which authorizes the comptroller to adopt rules to administer that section.

The amendment implements Government Code, §2101.035 and §2113.205.

§5.56. Appropriation Year Determination.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [~~In this section:~~]

(1) Appropriated money--Money [~~"Appropriated money" means money~~] that the legislature has appropriated through the General Appropriations Act or other law.

(2) Appropriation year--The year that the legal authorization for the charge was granted by the legislature. Multiple appropriation year activity may occur within a single fiscal year.

[~~(2) "Appropriation year" means the accounting period beginning on September 1st and ending the following August 31st.~~]

(3) Capital asset--A [~~"Capital asset" means a~~] good other than a consumable that benefits a state agency during more than one appropriation year.

(4) Comptroller--The [~~"Comptroller" means the~~] comptroller of public accounts for the State of Texas.

(5) Consumable--A [~~"Consumable" means a~~] good that perishes with use and that, under ordinary circumstances, will be entirely used during one appropriation year.

(6) Institution of higher education--Has [~~"Institution of higher education" has~~] the meaning assigned by Government Code, §2113.205(e)(1).

(7) Internet connection--Access [~~"Internet connection" means access~~] to the Internet under an interagency contract or a contract with a private Internet service provider.

(8) State agency--Has [~~"State agency" has~~] the meaning assigned by Government Code, §2113.205(e)(2).

(9) Telecommunications service--Includes [~~"Telecommunications service" includes~~] a corded telephone service, a cellular telephone and/or data service, a pager service, an Internet connection service, a cable television service, and a satellite television service. The term does not include a long distance charge, a prepaid telephone calling card, a cellular telephone roaming charge, and any other charge that is not imposed monthly as a flat rate.

(10) Utility service-- [~~"Utility service" means:~~]

(A) electricity, water, natural gas, or propane, if furnished by a utility;

(B) a telecommunications service; and

(C) a wastewater treatment service, a well water service, or a waste disposal service, if provided by a utility.

(b) General requirements and exceptions.

(1) The comptroller may require a state agency to make available to the comptroller the documentation that supports the agency's classification of a purchase or payment as a consumable, service, capital asset, or grant.

(2) This section does not apply to the extent it conflicts with state law, including a valid rider or other provision of the General Appropriations Act.

(3) This section does not apply to a purchase that is paid with money that is not appropriated money.

(c) Purchases of consumables.

(1) Except as provided in paragraph (2) of this subsection, a state agency must charge its purchase of a consumable to the appropriation year in which delivery of the consumable occurs.

(2) Except as provided in paragraph (3) of this subsection, a state agency may not charge its purchase of a consumable to a particular appropriation year if the agency could not reasonably have anticipated that the consumable would be consumed entirely during that year.

(3) A state agency may charge the appropriation year that immediately precedes the appropriation year in which a consumable is delivered for the purchase of the consumable if:

(A) the agency entered into a contract for the consumable during the immediately preceding appropriation year and, at the time of entrance into the contract, the agency reasonably anticipated that the consumable would be delivered during that year;

(B) delivery of the consumable was delayed until the next appropriation year for reasons beyond the agency's reasonable control; and

(C) the order quantity was no more than reasonably could have been consumed before the end of the immediately preceding appropriation year had delivery occurred as originally anticipated.

(d) Purchases of services.

(1) A state agency must charge its purchase of a service to the appropriation year in which the service is rendered.

(2) A state agency must prorate its payments under a contract that is performed over more than one appropriation year so that each appropriation year is charged only for the services that are rendered during that year.

(e) Purchases of capital assets.

(1) Except as provided in paragraphs (2) - (3) of this subsection, a state agency must charge its purchase of a capital asset to the appropriation year in which the agency enters into a valid contract for the purchase. The signing date of a validly executed contract is the determining factor, the delivery date of the asset is irrelevant.

(2) A state agency may contract during a particular appropriation year for the purchase of a capital asset in reliance on an existing appropriation for a subsequent appropriation year within the following biennium so long as payment for the asset does not occur before the start of the subsequent year.

(3) A payment under a lease-purchase agreement must be charged to the appropriation year in which the payment is made.

(f) Grant payments.

(1) A state agency's payment of a grant to an individual or entity must be charged to the appropriation year in which the agency contracts, awards, or otherwise legally commits to pay the grant if an appropriation for that year and purpose is available. Otherwise, the payment must be charged to the first appropriation year for which an appropriation is available.

(2) This subsection applies regardless of how the grantee will use the grant money.

(3) This subsection applies even if the payments under a grant contract will be made over more than one appropriation year.

(g) Contracts for the purchase of a combination of consumables, services, and capital assets.

(1) This subsection applies only to:

(A) a contract that involves the purchase of two or more of the following: a consumable, a service, or a capital asset; or

(B) two or more closely related contracts that together involve the purchase of two or more of the following: a consumable, a service, or a capital asset.

(2) If the dominant purpose of one or more contracts is to purchase a consumable, then subsection (c) of this section governs the determination of the correct appropriation year to charge for the purchases.

(3) If the dominant purpose of one or more contracts is to purchase a service, then subsection (d) of this section governs the determination of the correct appropriation year to charge for the purchases.

(4) If the dominant purpose of one or more contracts is to purchase a capital asset, then subsection (e) of this section governs the determination of the correct appropriation year to charge for the purchases.

(h) Purchase options. The appropriation year in which a state agency exercises a contractual option to purchase a good, a service, or a capital asset must be charged for the cost of exercising that option, subject to this section's requirements for determining the correct appropriation year to charge for the purchase.

(i) Periodical subscriptions, maintenance contracts, post office box rentals, insurance, Internet connections, and surety or honesty bonds.

(1) A state agency may use money that is appropriated for a particular appropriation year to pay the entire cost or amount of a periodical subscription, a maintenance contract, a post office box rental, insurance, an Internet connection, or a surety or honesty bond, regardless of whether the subscription, contract, rental, insurance, connection, or bond covers more than one appropriation year.

(2) This subsection prevails over subsections (c) - (h) of this section to the extent of any conflict.

(j) Utility services.

(1) A state agency may use money that is appropriated for a particular appropriation year to pay for a utility service that is provided during that appropriation year and September of the next appropriation year.

(2) This subsection prevails over subsections (c) - (h) of this section to the extent of any conflict.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER L. CLAIMS PROCESSING--DUPLICATE WARRANTS

34 TAC §5.140

The Comptroller of Public Accounts proposes an amendment to §5.140, concerning replacement warrants.

This section is amended to reflect the definition of a state agency, an appropriation year, a fiscal year and a warrant. The change to the rule is found in subsection (a)(8), (10), (11) and (12), respectively. This section is also amended to reflect the deleted reference to a check and to change fiscal year to appropriation year. This change to the rule is found in subsection (g)(1) and (4).

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing new definitions to clarify the rule's provisions. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Lisa Nance, Manager of Statewide Fiscal Services, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Government Code, §403.054, which requires the comptroller to adopt rules relating to the issuance of replacement warrants.

The amendment implements Government Code, §403.054

§5.140. Replacement Warrants.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Comptroller--The Comptroller of Public Accounts of the State of Texas.

(2) Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(3) May not--A prohibition. The term does not mean "might not" or its equivalents.

(4) Payee--A person to whom a warrant is made payable.

(5) Payment cancellation voucher--The paper form prescribed by the comptroller that a state agency completes when requesting cancellation of a warrant by the comptroller.

(6) Person--Includes an individual, a corporation, an organization, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership, an association, and any other legal entity.

(7) Replacement warrant--A warrant issued to replace an original warrant.

(8) State agency--

(A) a board, commission, department, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts and an institution of higher education as defined by Education Code, §61.003, other than a public junior college;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency.

(9) [~~(8)~~] Statewide accounting systems--Includes the Uniform Statewide Accounting System, the Uniform Statewide Payroll/Personnel System and the Statewide Payroll/Personnel Reporting System.

(10) Appropriation year--The year that the legal authorization for the charge was granted by the legislature. Multiple appropriation year activity may occur within a single fiscal year.

(11) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(12) Warrant--A state payment in the form of paper issued to a payee by the comptroller on behalf of a state agency.

(b) Request for issuance. A person may request issuance of a replacement warrant if the person is the payee of the original warrant. The request must be directed to the state agency on whose behalf the original warrant was issued and must be accompanied by any statements or documentation required by the agency. Upon receipt of the request, the agency must determine whether:

(1) the original warrant was lost, destroyed, or stolen;

(2) the person did not receive the original warrant; or

(3) the person's endorsement on the original warrant was forged.

(c) Issuance by comptroller. The comptroller may issue a replacement warrant only if:

(1) the comptroller receives proper notification of the existence of at least one of the conditions listed in subsection (b) of this section, concerning the original warrant;

(2) the state agency on whose behalf the original warrant was issued provides the notification; and

(3) subsection (f) of this section, does not prohibit issuance of the replacement warrant.

(d) Issuance by other agency. A state agency other than the comptroller may issue a replacement warrant if:

(1) the comptroller has delegated to the agency under Government Code, §403.060 the authority to issue original and replacement warrants;

(2) the replacement warrant would replace an original warrant previously issued by the agency;

(3) at least one of the conditions listed in subsection (b) of this section, exists concerning the original warrant; and

(4) subsection (f) of this section, does not prohibit issuance of the replacement warrant.

(e) Notification.

(1) This paragraph applies to all warrants except the financial assistance warrants governed by Human Resources Code, §31.038. Notification to the comptroller under subsection (c)(1) of this section, is proper only if the agency:

(A) submits the information directly to the comptroller's Web cancellation system in accordance with the comptroller's requirements, if the agency's documentation is retained in the agency's files for audit by the comptroller; or

(B) complies with the comptroller's requirement to submit a payment cancellation voucher to the comptroller for cancellation of warrants that are not eligible to be canceled on the comptroller's Web cancellation system.

(i) The agency must complete and submit the payment cancellation voucher to the comptroller.

(ii) The agency may substitute the comptroller's payment cancellation voucher with an agency payment cancellation voucher only upon approval by the comptroller.

(2) This paragraph applies only to the financial assistance warrants governed by Human Resources Code, §31.038. Notification to the comptroller under subsection (c)(1) of this section, is proper only if the Texas Department of Health and Human Services completes and submits the appropriate documentation to the comptroller.

(3) After a warrant is canceled, the state agency that requested its cancellation may request issuance of a replacement warrant in accordance with the procedures adopted by the comptroller. The request for a replacement warrant must be submitted to the statewide accounting system from which the original warrant was issued.

(f) Prohibition on issuance. A replacement warrant may not be issued if:

(1) the original warrant has been paid, unless a refund of the payment has been obtained by the state;

(2) the period during which the comptroller may pay the original warrant has expired under Government Code, §404.046, or other applicable law;

(3) the payee of the replacement warrant is not the same as the payee of the original warrant; or

(4) state or federal law prohibits the issuance of a warrant to the payee of the replacement warrant.

(g) Limitations and exceptions.

(1) A replacement warrant must reflect the same appropriation [~~fiscal~~] year as the original warrant and may not be paid unless presented to the comptroller or a financial institution before the

expiration of two years after the close of the fiscal year in which the original warrant was issued.

(2) Except as provided by paragraph (1) of this subsection, a replacement warrant for a federal guaranteed student loan identified by the Texas Higher Education Coordinating Board must be issued within 120 calendar days from its original date of issuance and may not be paid unless presented to the comptroller or a financial institution before its expiration date.

(3) Except as provided by this paragraph, the Texas Workforce Commission shall comply with this section when issuing a replacement warrant. The deadline for issuance of the warrant is the deadline specified in Labor Code, Chapter 210, Subchapter B.

(4) This section applies to the cancellation of a warrant [~~or check~~] or the issuance of a replacement warrant [~~or check~~] by a state agency other than the comptroller only if the agency issued the original warrant [~~or check~~] under authority delegated to the agency by the comptroller under Government Code, §403.060.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206236
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts proposes an amendment to §5.160, concerning incorporation by reference: accounting policy statements 2008-2009. The accounting policy statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System and for preparation of the annual financial report. Each accounting policy statement contains legal references, a background section, comptroller requirements and state agency requirements, and division contact if more information is needed. Section 5.160 is amended to correct the applicable biennium years, the effective date of the accounting policy statements and the name of the Fund Accounting Division.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by facilitating the collection and dissemination of state financial information. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Daniel Benjamin, Manager of Fiscal Integrity, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Government Code, §§403.011, 2101.012, 2101.035, and 2101.037, which provide the comptroller with the authority to prescribe rules and procedures relating to the operation of the Uniform Statewide Accounting System, the preparation of the annual financial report and supervising the state's fiscal concerns.

The amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

§5.160. Incorporation by Reference: Accounting Policy Statements 2012-2013 [~~2008-2009~~].

The "Accounting Policy Statements [~~2008-2009~~]," issued by the Fiscal Management [~~Fund Accounting~~] Division of the Comptroller of Public Accounts as of August 31, 2012 [~~2007~~], are incorporated by reference and filed with the secretary of state. All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request. All statements are also available on the Comptroller's website at: https://fmx.cpa.state.tx.us/fm/pubs/aps/index.php.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206237
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 475-0387

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SUBCHAPTER O. UNIFORM STATEWIDE ACCOUNTING SYSTEM

34 TAC §5.200

The Comptroller of Public Accounts proposes an amendment to §5.200, concerning state property accounting system.

The amendment conforms §5.200 to legislative changes made to the state property accounting statutes (Government Code, Chapter 403, Subchapter L) by Senate Bill 5, 82nd Legislature. This rule is also amended to reflect language changes for reporting lost, missing, damaged or stolen property, add the definition of a fiscal year, and to make other clarifying changes.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to the Government Code changes in Senate Bill 5 with regard to the state property accounting system. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Daniel Benjamin, Manager of Fiscal Integrity, P.O. Box 13528, Austin, Texas 78711.

The amendment is adopted under Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system.

The amendment implements Government Code, §§403.271 - 403.278.

§5.200. State Property Accounting System.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Annual physical inventory--The annual capitalized and controlled personal property physical inventory that a state agency must conduct once each year in accordance with this section.

(2) Betterment of personal property--An improvement of personal property that materially increases its serviceability or useful life, or both.

(3) Capital asset--A possession of the state that has an estimated useful life of more than one year.

(4) Capital lease--A lease of personal property under which the lessee substantially assumes the risks and benefits of ownership as specified under generally accepted accounting principles.

(5) Capitalized asset--A capital asset that has a value equal to or greater than the capitalization threshold established for that asset type.

(6) Charitable organization--The term has the meaning assigned by Civil Practice and Remedies Code, §84.003.

(7) Comptroller--The comptroller of public accounts for the State of Texas.

(8) Computer equipment--The equipment includes computer, telecommunications devices and systems, automated information systems, and peripheral devices and hardware that are necessary to the efficient installation and operation of that equipment, but does not include computer software.

(9) Controlled asset--An agency asset [~~A possession of~~] the state [~~that a state agency~~] has determined as high loss risk to [~~must~~] be secured and tracked because of the nature of the possession. The term does not include a capitalized asset, real property, an improvement to real property, or infrastructure.

(10) Fiduciary fund--A fund held by a state agency as trustee of the fund. The term includes pension funds and non-expendable trust funds.

(11) Fiscal year--The accounting period for the state government which begins on September 1 and ends on August 31.

(12) [~~(11)~~] Include--A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(13) [~~(12)~~] May not--A prohibition. The term does not mean "might not" or its equivalents.

(14) [~~(13)~~] Personal property--A capitalized or controlled [~~capital~~] asset not classified as real property.

(15) [~~(14)~~] Proprietary fund--A self-supporting fund whose resources are generated through user charges. The term includes enterprise and internal service funds.

(16) [~~(15)~~] Replacement of personal property--A replacement of an internal or external part of personal property that allows it to complete its normal useful life.

(17) [~~(16)~~] Salvage personal property--Personal property that no longer serves its original purpose because it is depleted, worn out, damaged, consumed, outdated, or obsolete. The term does not include personal property that has a remaining useful life.

(18) [~~(17)~~] State agency--A state governmental entity that manages, administers, or controls personal property.

(19) [~~(18)~~] State employee--An officer or employee of a state agency.

(20) [~~(19)~~] State property accounting system--The fixed asset component of the uniform statewide accounting system.

(21) [~~(20)~~] Supplemental physical inventories--The optional physical inventories that a state agency conducts in addition to the required annual physical inventory.

(22) [~~(21)~~] Surplus personal property--Personal property in the possession of a state agency that is not currently needed by the agency and is not required for the agency's foreseeable needs. The term does not include salvage personal property.

(23) [~~(22)~~] Trust property--Property not owned by the state that a state agency temporarily holds on behalf of the owner and is not used in agency operations.

(b) Exemptions.

(1) Equipment and supplies purchased through programs, contracts, or grants with the Department of State Health Services.

(A) An item of equipment or a supply is exempt from the requirements of subsections (c) - (q) of this section if it is:

(i) used to promote and maintain public health;

(ii) is purchased by or for a qualified entity; and

(iii) is purchased through a program, contract, or grant with the Department of State Health Services.

(B) The exemption ends if the item or supply is returned to the Department of State Health Services upon the termination of the applicable program, contract, or grant. When the exemption ends, the formerly exempt equipment or supply must be reported to the state property accounting system in accordance with the comptroller's requirements.

(C) A state agency that purchases an exempt item of equipment or a supply shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items exempt under subparagraph (A) of this paragraph.

(D) In this paragraph, "qualified entity" includes an individual, a corporation, a local unit of government, and a state agency.

(2) The Department of Assistive and Rehabilitative Services.

(A) A material, tool, book, or other necessary apparatus provided to a client by the Department of Assistive and Rehabilitative Services is exempt from subsections (c) - (q) of this section.

(B) The Department of Assistive and Rehabilitative Services shall develop and maintain internal control procedures for

keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time.

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be added to the state property accounting system.

(3) Items provided to clients of state agencies.

(A) The comptroller may exempt from the reporting requirements of this section a material, tool, book, or other necessary apparatus if the item is provided to a client by a qualifying state agency.

(B) The appropriate state agency shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time.

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be added to the state property accounting system.

(4) Government Code, Chapter 403, Subchapter L, as added by Senate Bill 5, 82nd Legislature, 2011, Chapter 1049, §6.07, does not apply to a university system or institution of higher education except that Government Code, §§403.273(h), 403.275, and 403.278, do apply to a university system or institution of higher education.

(A) A university system or institution of higher education shall account for all personal property as defined by the comptroller under Government Code, §403.272. At all times, the property records of a university system or institution of higher education must accurately reflect the personal property possessed by the system or institution.

(B) The state auditor, based on a risk assessment and subject to the legislative audit committee's approval of including the examination in the audit plan under Government Code, §321.013, may periodically examine property records or inventory as necessary to determine if controls are adequate to safeguard state property.

(c) Certification of internal state agencies and reporting state agencies.

(1) General requirement. A state agency must be certified as an internal state agency or a reporting state agency.

(2) Initial certification. A state agency that has not been certified before the effective date of this section must properly complete and submit to the comptroller the form required by the comptroller. The agency must specify on the form whether the agency wants certification as an internal state agency or a reporting state agency. The comptroller shall review the form and consider the agency's ability to comply with this section before certifying the agency.

(3) State agency requests for changes in certification.

(A) A reporting state agency may change its certification to an internal state agency by:

(i) properly completing the form required by the comptroller; and

(ii) obtaining the comptroller's approval of the change.

(B) An internal state agency may change its certification to a reporting state agency by:

(i) properly completing the form required by the comptroller; and

(ii) obtaining the comptroller's approval of the change.

(C) When considering whether to approve or disapprove a state agency's request for a certification change, the comptroller shall:

(i) consider the agency's history of complying or not complying with this section's requirements for the agency's current certification; and

(ii) determine the agency's capability to comply with this section's requirements for the agency's requested certification.

(D) This subparagraph applies if the comptroller receives a state agency's request for a certification change not later than the 30th day before the start of the next fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the fiscal year following the fiscal year during which the comptroller approves the change; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year during which the comptroller approves the change.

(E) This subparagraph applies if the comptroller receives a state agency's request for a certification change during the last 29 days of a fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the second fiscal year following the fiscal year during which the comptroller receives the request; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year following the fiscal year in which the comptroller receives the request.

(4) Certification changes initiated by the comptroller.

(A) The comptroller may change a state agency's certification from a reporting state agency to an internal state agency or vice versa anytime the comptroller determines the change is needed.

(B) If the comptroller changes a state agency's certification under subparagraph (A) of this paragraph, then the change is effective on the date specified by the comptroller.

(5) Criteria for certification as an internal state agency. A state agency may be an internal state agency only if:

(A) the agency determines that it will use the state property accounting system as its own property accounting system; and

(B) the agency agrees to maintain a perpetual inventory.

(6) Criteria for certification as a reporting state agency.

(A) A state agency is a reporting state agency if it:

(i) is not exempt from this section; and

(ii) is not an internal state agency.

(B) A reporting state agency shall modify its property accounting system to comply with the comptroller's reporting requirements, as periodically amended.

(C) A reporting state agency shall demonstrate to the comptroller's satisfaction that the agency has disaster recovery capability.

(7) Senate Bill 5, 82nd Legislature, 2011, §6.07 provides exemptions for universities and institutions of higher education.

(d) Personal property physical [~~Physical~~] inventories.

(1) Frequency and timing of physical inventories.

(A) Except as provided by subsection (m) of this section, a state agency shall conduct an annual physical inventory of the personal property and trust property in the agency's possession. The agency may choose the date of the inventory.

(B) The comptroller encourages a state agency to conduct each year one or more supplemental physical inventories of the personal property and trust property in the agency's possession.

(2) Requirements for annual personal property physical inventories.

(A) When a state agency conducts an annual physical inventory of the personal property and trust property in the agency's possession, the agency shall:

(i) ensure that each property item is still within the agency's possession;

(ii) determine whether the person who has custody of each property item as indicated on the agency's records still has custody of the item; and

(iii) determine the condition of each property item.

(B) A state agency may use any method for conducting an annual physical inventory that is acceptable to the comptroller.

(C) If the results of a state agency's annual physical inventory vary from the records on the state property accounting system, then the agency shall immediately report the discrepancies to the comptroller through the system. The report must provide a reason for each discrepancy.

(3) Reports to the comptroller about annual physical inventories.

(A) The head of a state agency shall send a report to the comptroller about the agency's annual physical inventory.

(B) The report must contain:

(i) a copy of the results of the inventory; and

(ii) a signed statement that:

(I) provides the date the inventory was conducted;

(II) identifies the individual who the comptroller may contact for information about the inventory;

(III) describes the methods used to conduct the inventory;

(IV) summarizes the values received from the inventory; and

(V) contains the other information required by the comptroller.

(C) Deadline for reports. The head of a state agency shall ensure that the comptroller receives a copy of the results of the agency's inventory and the signed statement not later than the earliest of:

(i) the 45th day after the date the inventory is conducted; or

(ii) the 20th day after the end of the fiscal year for which the inventory is conducted.

(D) Properties identified as missing during the annual physical inventory must be recorded in the State Property Accounting (SPA) system with an effective date equal to the date the annual physical inventory was conducted.

(4) Requirements for supplemental physical inventories.

(A) A state agency may use any method for conducting a supplemental physical inventory that is acceptable to the comptroller. Statistical sampling and dollar unit sampling techniques are acceptable for supplemental physical inventories only. They [~~if they~~] are to be administered properly [~~used~~] and comply with the comptroller's requirements.

(B) A state agency shall maintain in its records the results of each supplemental physical inventory.

(C) If the results of a state agency's supplemental physical inventory vary from the records on the state property accounting system, then the agency should consider the immediate conducting of an annual physical inventory.

(5) Loaned personal property. Personal property that a state agency has loaned to another state agency is the responsibility of the lending state agency for the purpose of this subsection.

(6) Transferred personal property. Personal property that a state agency has transferred to another state agency is the responsibility of the transferring state agency until the transfer has been completed in accordance with the comptroller's requirements.

(7) Missing, stolen, salvage, or surplus personal property. A state agency must include in a physical inventory the agency's missing, stolen, salvage, or surplus personal property until it has been deleted from the state property accounting system in accordance with this section.

(e) Records and reporting.

(1) Internal state agencies.

(A) An internal state agency shall maintain a perpetual inventory. The agency shall record personal property and trust property on the state property accounting system at the time of acquisition. The information must be recorded in accordance with the comptroller's requirements.

(B) The comptroller shall maintain an internal agency's property records on the state property accounting system.

(2) Reporting state agencies.

(A) A reporting state agency shall report information to the state property accounting system in accordance with the comptroller's schedules, procedures, and classification system. The comptroller may require a reporting state agency to submit information at any time. The comptroller shall notify reporting state agencies in writing about the required frequency of the agencies' reports.

(B) A reporting state agency shall maintain its property records in the manner and format required by this section and the comptroller. The agency shall ensure that its property accounting system is always capable of providing the information required by the state property accounting system.

(3) Group and unit tracking of personal property.

(A) A state agency shall track personal property on a unit basis.

(B) Possessions of the state other than personal property may be tracked on a group basis only if the requirements of subparagraphs (C) and (D) of this paragraph are satisfied.

(C) A state agency may track possessions of the state on a group basis only if all the possessions in the group:

(i) have the same characteristics;

(ii) have the same purchase and in-service dates;

(iii) have the same class code;

(iv) are visually identifiable as logically belonging to the group; and

(v) may be depreciated using the same methods.

(D) Notwithstanding anything in this paragraph, possessions of the state that are purchased with debt financing by the Texas Public Finance Authority may be tracked on a group basis only if all the possessions in the group are included in the same lease supplement.

(4) Missing, stolen, damaged, or destroyed personal property.

(A) Upon receiving a report about stolen, damaged, or destroyed personal property from a head of agency under subsection (f)(1)(C) or (D) of this section or from a property manager under subsection (g)(2)(B) or (C) of this section, the comptroller shall forward necessary records about the property to the attorney general.

(B) The attorney general may investigate and take appropriate legal action to recover the value of stolen, damaged, or destroyed personal property. The attorney general shall determine the value of the property to be recovered based on the market value of the property and the degree of responsibility of the person who was entrusted with the property.

(C) A state agency shall delete missing personal property from the state property accounting system before two annual physical inventories have been conducted or two calendar years have elapsed since it was determined to be missing.

(D) A state agency may delete missing, stolen, damaged, or destroyed personal property from the state property accounting system only in accordance with the comptroller's procedures.

(f) Responsibilities of heads of state agencies.

(1) Care, custody, and control of personal property.

(A) The head of a state agency is responsible for the custody and care of personal property and trust property in the agency's possession. This responsibility does not end when a property manager is designated.

(B) The head of a state agency is responsible for ensuring that the agency maintains adequate inventory controls on personal property and trust property. Upon request, the state auditor may advise and make recommendations to the agency about those controls.

(C) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, [~~then~~] the head of the agency shall file a report with [~~the comptroller and~~] the attorney general.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(D) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property has been stolen, then the head of agency shall inform [~~the comptroller,~~] the attorney general[~~,~~] and local law enforcement personnel.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(iii) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises.

(2) Designation, supervision, and training of property managers.

(A) The head of a state agency shall:

(i) designate a property manager for the agency;

(ii) inform the comptroller of the designation by properly completing and submitting the form required by the comptroller; and

(iii) ensure that the property manager receives training about this section and the state property accounting system.

(B) The head of a state agency may designate more than one property manager for the agency only if the comptroller approves.

(C) The head of a state agency may designate one or more alternate property managers for the agency. The head of agency shall inform the comptroller of the designation by properly completing and submitting the form required by the comptroller.

(D) If a state agency's property manager or alternate property manager changes, then the head of the agency shall inform the comptroller of the change by properly completing and submitting the form required by the comptroller.

(E) The head of a state agency shall ensure that the property manager for the agency properly carries out the property manager's duties as required by this section.

(3) Providing receipts. The head of a state agency shall provide the receipt required by subsection (g)(4) of this section if the head of agency is entrusted with personal property or trust property.

(4) Use of personal property or trust property. The head of a state agency may use personal property and trust property only for state purposes.

(5) Change in the head of a state agency.

(A) When the head of a state agency changes, the outgoing head of agency shall complete the form required by the comptroller and deliver the form to the incoming head of agency.

(B) After verifying and signing the form, the incoming head of agency shall send copies of the form to the comptroller.

(6) Liability. The head of a state agency is financially liable for the loss sustained by the state if the head of agency is entrusted with personal property or trust property and:

(A) the property disappears because the head of agency fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the head of agency fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the head of agency's negligent or intentional wrongful act.

(g) Responsibilities of property managers.

(1) Determining the responsibilities of alternate property managers. The property manager of a state agency shall determine the responsibilities of the agency's alternate property managers. The property manager shall ensure that the alternate property managers properly fulfill their responsibilities.

(2) Custody of personal property and trust property.

(A) The property manager of a state agency is the custodian of all personal property and trust property possessed by the agency.

(B) If a property manager has reasonable cause to believe that personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, then the property manager shall inform [~~the comptroller and~~] the attorney general. A report to the comptroller must be made in the form and manner required by the comptroller.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(C) If a property manager has reasonable cause to believe that the agency's personal property or trust property has been stolen, [~~then~~] the property manager shall inform [~~the comptroller,~~] the attorney general[~~,~~] and local law enforcement personnel.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(iii) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises.

(3) Maintaining records. The property manager of a state agency shall maintain the records required by the comptroller and this section.

(4) Entrusting personal property or trust property to other persons.

(A) A property manager may not entrust personal property or trust property to a person unless the person provides a signed, written, and dated receipt to the property manager.

(B) The receipt must contain a statement similar to the following. "I understand that I am financially liable to the state for the disappearance of the personal property or trust property if I fail to exercise reasonable care for its safekeeping; the deterioration of the property if I fail to exercise reasonable care to maintain and service it; and the damage or destruction of the property if it occurs because of my negligent or intentional wrongful act."

(C) A property manager may not entrust personal property or trust property to a person if the property manager knows or reasonably should know that the person will use the property for other than state purposes.

(5) Use of personal property and trust property. A property manager may use personal property and trust property only for state purposes.

(6) Changes in property managers.

(A) When a property manager changes, the outgoing property manager shall complete the form required by the comptroller and deliver the form to the incoming property manager.

(B) After verifying and signing the form, the incoming property manager shall send copies of the form to the comptroller.

(7) Liability. A property manager is financially liable for the loss sustained by the state if the property manager is entrusted with personal property or trust property and:

(A) the property disappears because the property manager fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the property manager fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the property manager's negligent or intentional wrongful act.

(h) Responsibilities of state employees.

(1) Providing receipts. A state employee shall provide the receipt required by subsection (g)(4) of this section if the employee is entrusted with personal property or trust property.

(2) Use of personal property and trust property. A state employee may use personal property only for state purposes.

(3) Liability. A state employee is financially liable for the loss sustained by the state if the employee is entrusted with personal property or trust property and:

(A) the property disappears because the employee fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the employee fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the employee's negligent or intentional wrongful act.

(i) Valuation of personal property.

(1) General provision. This subsection governs the valuation of personal property as reported to the state property accounting system.

(2) Newly acquired personal property. The value of newly acquired personal property must be equal to the sum of:

(A) the cost of the property; and

(B) the costs required to place the property into service.

(3) Donated personal property.

(A) The value of personal property acquired through donation must be equal to its fair market value on the date of donation.

(B) The fair market value of donated personal property must be determined through a reasonable market study.

(C) A state agency that conducts a market study shall fully document the methods used to conduct the study. The agency shall keep the documentation in the agency's records in accordance with the comptroller's requirements. The agency shall send a copy of the documentation to the state property accounting system.

(4) Personal property manufactured by the state. The value of personal property manufactured by the state must be equal to the total cost of labor and materials. Overhead costs may be included in the value if the manufacturing state agency determines it would be cost-effective.

(5) Betterments and replacements of personal property.

(A) A state agency shall determine the value of a betterment or replacement of personal property:

(i) immediately following the completion of the betterment or replacement; or

(ii) at the agency's earliest opportunity as deemed appropriate by the agency and the comptroller.

(B) The value of a betterment of personal property must be expensed unless the betterment increases the value or useful life of the property by a material amount. If a betterment is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements.

(C) The value of a replacement of personal property is equal to the cost of the replacement less the original cost of the part being replaced. The value of the replacement must be expensed unless the replacement materially increases the value or estimated useful life of the property. If a replacement is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements.

(D) If a state agency is required to increase the value of personal property on the state property accounting system because of a betterment or replacement, then the agency shall keep documentation in its records that supports the amount of the increase. The agency shall make the documentation available for inspection upon request. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(6) Debt-financed personal property.

(A) In this paragraph, the total principal of debt-financed personal property is equal to the purchase price of the property plus the applicable service charge imposed by the Texas Public Finance Authority.

(B) The acquisition cost of debt-financed personal property other than manufactured items must reflect the total principal of the property and the costs required to place the property into service.

(C) The acquisition cost of debt-financed personal property that has been manufactured should be equal to the total cost of acquiring the property plus the cost of placing the property into service. This includes the principal, interest, finance charges, costs of issuance, and administrative fees.

(7) Leased personal property.

(A) Personal property that a state agency has leased under a capital lease must be valued in accordance with this paragraph.

(B) Subject to subparagraph (C) of this paragraph, the cost of leased personal property is equal to the present value of the minimum lease payments plus the cost of placing the property into service. The cost of the property does not include any costs not paid by the agency.

(C) The cost of leased personal property may not exceed the property's fair market value.

(8) Trade-ins. If a state agency is authorized to trade personal property for other personal property, then the agency must report the trade to the state property accounting system in accordance with the comptroller's requirements.

(9) Condition of personal property. When a state agency reports surplus or salvage personal property to the state property accounting system, the agency must include the condition of the property in the report. The agency should use the categories adopted by the comptroller when reporting the condition of personal property.

(10) Previously depreciated personal property. If a state agency obtains ownership of personal property that was previously purchased with federal funds and depreciated for federal reporting purposes, then the agency shall value the property at its original cost. The previous depreciation has no effect on the value of the personal property for the purposes of the state property accounting system.

(j) Accounting practices.

(1) Depreciation of personal property.

(A) The depreciable personal property of proprietary and fiduciary funds must be depreciated in accordance with generally accepted accounting principles.

(B) An internal state agency shall depreciate personal property that is a general fixed asset by using the straight-line method. The depreciation must be recorded on the state property accounting system on a memorandum basis unless generally accepted accounting principles require depreciation. Regardless of how the depreciation is recorded, it shall be recorded at the end of each fiscal year unless the comptroller specifies otherwise.

(C) The amount that personal property depreciates over a fiscal year by using the straight-line method is equal to the difference between the property's acquisition cost and its salvage value; divided by the estimated useful life of the property expressed in months.

(D) A state agency shall use the state property accounting system's default value for the estimated useful life of personal property unless the agency documents a different value based on the agency's experience. This subparagraph applies only when a state agency is calculating depreciation for the purpose of recording it on the state property accounting system.

(2) Transfer of personal property between funds.

(A) If a state agency transfers personal property from a proprietary fund to a governmental fund, then a new cost basis must be established for the property in the governmental fund. The new cost basis must be based on the acquisition cost of the property as recorded in the proprietary fund less any accumulated depreciation earned on the property. There is no requirement for the agency to modify the estimated useful life of the property.

(B) If a state agency transfers personal property from a governmental fund to a proprietary or fiduciary fund, then the acquisition cost of the property must be recorded in the proprietary or fiduciary fund. The acquisition cost as recorded in the proprietary or fiduciary fund must be equal to the acquisition cost as recorded in the governmental fund. The estimated useful life of the property must be adjusted to reflect the best estimate of useful life available to the proprietary or fiduciary fund.

(C) If a state agency transfers personal property from a governmental fund to another governmental fund, then the acquisition cost of the property as recorded in the new fund must be the same as the cost recorded in the old fund.

(3) Reporting and reconciliation of personal property inventory balances.

(A) A state agency shall:

(i) report to the state property accounting system general ledger information using generally accepted accounting principles;

(ii) track beginning balances at the beginning of each year; and

(iii) report additions, deletions, and adjustments in personal property throughout the year so that year end balances can be determined.

(B) An internal state agency should reconcile its general ledger balances for personal property to the supporting financial detail in the state property accounting system. The agency should accomplish the reconciliation on a monthly basis at the month-end closing. All adjustments made during the reconciliation should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(C) A reporting state agency should reconcile its corresponding balances to the detail reported to the state property accounting system on a quarterly basis. Adjustments should be entered not later than the 20th day after the end of the quarter. All adjustments should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(k) Maintaining records.

(1) Forms. A state agency shall use the forms prescribed by the comptroller when taking any action authorized or required by this section. The comptroller may adopt and modify forms as the comptroller deems necessary.

(2) Loans of personal property.

(A) A state agency may loan personal property to another state agency only if the head of the agency lending the property provides written authorization for the lending. The head of the agency to which the property is lent must execute a written receipt.

(B) A state agency that loans personal property to another state agency shall document the loan as required by the comptroller.

(C) A state agency that loans personal property to another state agency does not suspend or eliminate its responsibilities toward the property under this section and applicable law.

(3) Transfers of personal property.

(A) A state agency that transfers personal property to another state agency shall comply with the procedures and requirements adopted by the comptroller.

(B) A state agency that receives personal property from another state agency shall comply with the procedures and requirements adopted by the comptroller.

(C) Personal property that is transferred from one state agency to another is in the possession of the transferring agency until the receiving agency properly enters its receipt of the property in the state property accounting system.

(D) A state agency may not transfer property purchased through the master lease financing program administered by the Texas Public Finance Authority unless the authority provides advance approval of the transfer in accordance with the authority's requirements.

(4) Surplus and salvage personal property.

(A) A state agency shall comply with applicable law and rules when transferring, selling, or disposing of its surplus or salvage personal property.

(B) When a state agency determines that it possesses surplus or salvage personal property, the agency shall notify the state property accounting system in accordance with the comptroller's requirements.

(C) The notification provided under subparagraph (B) of this paragraph constitutes official notice to the Texas Facilities Commission that the surplus or salvage personal property is available for sale or other disposition.

(D) A state agency may delete surplus or salvage personal property from the state property accounting system in accordance with the comptroller's procedures.

(E) Surplus personal property that has not been reported to the state property accounting system must be added to the system before the property may be deleted from the system.

(F) Salvage personal property shall be removed from the state property accounting system in accordance with the comptroller's requirements.

(G) Each house of the legislature is exempt from the surplus property provisions of Government Code, Chapter 2175, if the rules and regulations of the administration committee of the house has adopted a system for disposing of the property. An agency in the legislative branch shall dispose of its surplus or salvage property under a disposition system established by that agency.

(H) Subparagraphs (A) - (F) of this paragraph do not apply to products and by-products of research, forestry, agriculture, livestock, and industrial enterprises that exceed the quantity required for consumption by the producing state agency if the agency has a continuing and adequate system of marketing research and sales. The deletion of those products and by-products from the state property accounting system must comply with the comptroller's requirements.

(I) State eleemosynary institutions are exempt from the provisions of Government Code, Chapter 2175, that relate to the disposition of surplus or salvage property except as provided by other law.

(J) Government Code, Chapter 2175, does not apply to the disposition of certain recyclable materials, including paper, cardboard, aluminum cans, plastics, glass, one-use pallets, used tires, used oil, and scrap metal, where the disposition is not in the best interests of the state or economically feasible.

(K) Institutions or agencies of higher education are exempt from the provisions of Government Code, Chapter 2175, that relate to the disposition of surplus or salvage property:

(i) where the governing board of each university system, institution, or agency of higher education establishes written procedures for the disposition of surplus or salvage property of the system, institution or agency; and

(ii) where the procedures allow for the direct transfer of materials or equipment that can be used for instructional purposes to a public school or school district, or an assistance organization designated by the school district, in accordance with other law.

(L) Government Code, Chapter 2175, does not apply to the disposition of surplus computer equipment:

(i) by the Secretary of State, who shall give preference to transferring the property to counties for the purpose of improving voter registration technology and complying with Election Code, §18.063;

(ii) by a state agency involved in the areas of health, human services, or education, who shall give preference to transfer the property to a public school, school district, or assistance organization specified by the school district;[;] or[;]

(iii) the Office of Court Administration, who shall give preference to transferring the equipment to a local or state governmental entity in the judicial branch of local or state government.

(l) Inventory control.

(1) Marking of personal property. A state agency shall permanently mark each item of personal property in the agency's possession as property of the State of Texas. The marking is permanent for the purpose of this paragraph if the marking can be removed only through considerable or intentional means. The marking shall be highly visible so that conducting a physical inventory is facilitated.

(2) Property inventory numbers.

(A) A state agency shall assign a unique property inventory number to each item of personal property that is tracked on a unit basis. The number shall be printed on a label. The label shall be attached to the item in a highly visible location so that conducting a physical inventory is facilitated.

(B) A property inventory number may not be reused, even if property has been deleted from the state property accounting system.

(3) Responsibility for securing and tracking personal property. A state agency is responsible for ensuring that its personal property and trust property are tracked and secured in the manner that is most likely to prevent damage to and the theft, loss, or misuse of the property.

(4) Locating personal property. A state agency must know where all of its personal property and trust property is located at all times.

(m) Abolished state agencies.

(1) Application of this subsection. This subsection applies to an abolished state agency only to the extent this section is consistent with the law that abolishes the agency.

(2) Responsibilities of the head of an abolished state agency.

(A) The head of an abolished state agency shall:

(i) conduct a complete and accurate physical inventory of the agency's possessions in accordance with the comptroller's requirements;

(ii) furnish a copy of the inventory to the Texas Facilities Commission not later than the effective date of the abolition; and

(iii) transfer all personal property of the agency to the Texas Facilities Commission in accordance with the comptroller's requirements.

(B) The physical inventory required by subparagraph (A)(i) of this paragraph is in addition to the annual physical inventory required by subsection (d) of this section.

(3) Responsibilities of the Texas Facilities Commission. The Texas Facilities Commission shall care for the personal property transferred to the commission under paragraph (2) of this subsection until the commission distributes or sells the property in accordance with applicable law.

(n) Real property.

(1) Using the state property accounting system to track real property. A state agency may use the state property accounting system to track real property if the agency:

(A) establishes its own coding and accounting structures; and

(B) complies with the comptroller's requirements.

(2) Submitting information to the General Land Office. A state agency may not use the state property accounting system to track real property instead of submitting information about the property to the General Land Office.

(o) Access to the state property accounting system. An individual may have access to the state property accounting system only in accordance with the procedures and security limitations prescribed by the comptroller.

(p) Consequences of violating this section. The comptroller may refuse to draw warrants or initiate electronic funds transfers on behalf of a state agency that fails to comply with this section.

(q) Conflict with federal laws or regulations. If a federal law or regulation conflicts with this section, then the law or regulation prevails over this section to the extent necessary to avoid the conflict.

(r) Disposal of computer equipment by charitable organizations.

(1) Application of this subsection. This subsection applies to computer equipment purchased by a charitable organization for $500 or more with funds received from the state through appropriation by the Texas Legislature or by grant or by other means.

(2) General requirements. Except as provided by paragraphs (3) and (4) of this subsection, a charitable organization that purchases computer equipment with funds received from the state may not dispose of or discard the computer equipment before the fourth anniversary of the date the charitable organization purchased that equipment.

(3) Exceptions. This subsection does not prohibit:

(A) the sale or trade of computer equipment; or

(B) the disposal of equipment that is not operational.

(4) Donations to other charitable organizations. A charitable organization may dispose of computer equipment purchased with state funds within the four-year period after the date of purchase by donating the equipment to another charitable organization.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206238

Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 152. CORRECTIONAL INSTITUTIONS DIVISION

SUBCHAPTER D. OTHER RULES

37 TAC §152.51

The Texas Board of Criminal Justice proposes amendments to §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death. The proposed amendments are necessary to establish that a witness must be 18 years of age or older, increase the number of victim witnesses and permit surviving victim witnesses under certain circumstances.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be to provide the close relatives of the victim, surviving victims, offender relatives and friends, the media, and public officials the opportunity to witness executions. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Code of Criminal Procedure, Article 43.20.

Cross Reference to Statutes: Texas Government Code §492.013.

§152.51. Authorized Witnesses to the Execution of an Offender Sentenced to Death.

(a) Purpose. The purpose of this section [~~rule~~] is to specify those persons, 18 years of age or older, who are authorized to witness the scheduled execution of an offender who has been sentenced to death.

(b) Victim Witnesses. Five [~~(5)~~] close relatives of the victim and a spiritual advisor may be victim witnesses. The total number of victim witnesses shall not exceed six [~~(6)~~], unless the provision under (b)(3) [~~(b)(2)(C)~~] of this section [~~rule~~] applies, at which time the number of victim witnesses shall not exceed seven [~~(7)~~].

(1) "Close relative of the victim" means the following persons in relation to the victim for whose death the [~~an~~] offender has been scheduled for execution [~~is sentenced to death~~]:

(A) The spouse of the victim at the time of the victim's death;

(B) A parent or stepparent of the victim;

(C) An adult brother, sister, child or stepchild of the victim; [~~(~~]adult is defined as anyone 18 years of age or older[~~)~~]; or

(D) An individual who had a close relationship with the victim or has a close relationship with a relative of the victim, with [~~upon~~] the recommendation of the Victim Services Division (VSD) director and the approval of the [~~Director of the~~] Correctional Institutions Division (CID) director.

(2) If there are fewer than five [~~(5)~~] close relatives of the victim, others may be permitted to attend the execution as follows:

(A) Close relatives of a victim for whose death the offender has been convicted but [~~for whose death the offender is~~] not sentenced to death;

(B) Close [~~If there are still fewer than five (5) persons, close~~] relatives of a victim for whose death the offender is unequivocally responsible, with [~~upon~~] the recommendation of the VSD director and approval of the CID director [~~Director of the CID~~]; and

(C) Surviving victim of a crime for which the offender has been convicted and sentenced to death, with the recommendation of the VSD director and approval of the CID director.

(3) [~~(C)~~] If there are multiple victims involved relating to the offense for which the offender has been convicted and sentenced to death, the total number of witnesses shall be increased to seven [~~six (6)~~].

(4) [~~(3)~~] The spiritual advisor shall be a bona fide pastor or comparable official, such as a [~~(e.g.,~~] minister, priest, or rabbi[~~)~~] of the victim's close relatives' religion.

(c) Offender Witnesses. Individuals that may be offender witnesses are as follows:

(1) Five [~~(5)~~] relatives or friends and a spiritual advisor, if requested by the condemned offender, are eligible to attend the execution of the condemned offender if:

(A) The condemned offender provides a list of witnesses and the name or type of spiritual advisor requested to attend the execution to the death row supervisor or warden's designee [~~Classification and Records Department~~] at least 14 days prior to the date of execution; and

(B) The witnesses [~~and spiritual advisor~~] requested [~~by the offender~~] are on the offender's approved Visitors List and [~~the witnesses~~] are 18 years of age or older.

(2) If less than 14 days prior to the scheduled execution the condemned offender requests to change the names of previously submitted witnesses or requested spiritual advisor, the offender shall submit a request in writing to the CID director [~~Director of the CID~~] who shall approve or disapprove the changes.

(3) The spiritual advisor shall be a bona fide pastor or comparable official, such as a [~~(e.g.,~~] minister, priest, or rabbi[~~)~~] of the condemned offender's elected religion.

(d) Other Witnesses. The only persons other than those listed in subsection (b) and (c) above who are authorized to witness an execution are:

(1) Texas Department of Criminal Justice (TDCJ) staff or law enforcement staff as deemed necessary by the CID director [~~Director of the CID~~];

(2) Members of the Texas Board of Criminal Justice [~~(TBCJ)~~];

(3) Inspector general [~~General~~] or designee and the Office of the Inspector General [~~(OIG)~~] assigned staff as deemed necessary by the inspector general [~~Inspector General~~];

(4) TDCJ chaplains [~~Chaplains~~];

(5) Walker County judge [~~Judge~~];

(6) Walker County sheriff [~~Sheriff~~];

(7) Media pool representatives consisting of:

(A) One [~~(1)~~] reporter from the Huntsville Item;

(B) One [~~(1)~~] reporter from the Associated Press [~~(AP)~~];

(C) Three [~~(3)~~] additional print media or [~~and/or~~] broadcast media representatives selected from a list [~~rotating lists~~] of applicants maintained by the TDCJ Public Information Office; and

(8) Any other person [~~as~~] approved by the TDCJ CID director [~~Executive Director~~].

(e) Prohibition of Attendance. Any offender currently confined within the TDCJ is specifically denied authorization to witness the execution of an offender.

(f) Victim Notification.

(1) The VSD shall maintain a list of scheduled executions and any subsequent updates regarding significant changes pertaining to the execution, such as [~~(e.g.,~~] dates or[~~,~~] court rulings[~~, etc.)~~]. The Executive Clemency Section of the Board of Pardons and Paroles [~~(BPP)~~] will provide a list of scheduled executions to the VSD in an expedient manner.

(2) The VSD is responsible for notifying the victim(s) or [~~and/or~~] close relatives of the victim of the scheduled execution date, time, and location, upon request. It is the responsibility of the victim(s) or [~~and/or~~] close relatives to notify the VSD of any subsequent address or telephone number changes and their intent to attend.

(3) The relatives of the victim, and surviving victims, shall be identified and approved by the VSD.

(4) It is the responsibility of the VSD to notify the CID director, [~~Director of the CID,~~] no later than five [~~(5)~~] days prior to the scheduled execution date, of the names and contact numbers for the victim's witnesses who plan to attend.

(5) The VSD shall contact the relatives of the victim, and surviving victims, and provide information regarding the written procedures affecting their participation.

(g) Requirements for the Execution Chamber. The room provided for the execution shall be arranged so that:

(1) There is sight and sound separation between any offender witnesses and any victim witnesses; and

(2) There is sound separation between the condemned offender and those in attendance, except arrangements shall be provided to allow those in attendance to hear the statements of the condemned offender.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 3, 2012.

TRD-201206194
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 463-9693

37 TAC §152.61

The Texas Board of Criminal Justice proposes amendments to §152.61, concerning Emergency Response to Municipal, County, State, or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails. The proposed amendments are necessary to include university, campus, and school district police departments in the group of law enforcement agencies to which the Texas Department of Criminal Justice may provide emergency response assistance.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be to protect the public safety by authorizing Texas Department of Criminal Justice staff to render assistance in an emergency situation. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §494.008.

Cross Reference to Statutes: Texas Government Code §492.013.

§152.61. Emergency Response to [~~Municipal, County, State or Federal~~] Law Enforcement Agencies or Departments and Non-Agent Private Prisons or Jails [~~Prisons/Jails~~].

(a) Definitions. The following words and terms, when used in this section [~~rule~~], shall have the following meanings unless the context clearly indicates otherwise.

(1) Assistance refers to [~~--~~] Texas Department of Criminal Justice (TDCJ) resources provided to [~~municipal, county, state or federal~~] law enforcement agencies or departments, and non-agent private prisons or jails such as personnel, equipment, vehicles, horses, tracking pack or scent specific canines, and chemical agents.

(2) Emergency Situation is an [--An] event determined by a law enforcement agency that presents an immediate or potential threat to public safety if the TDCJ's assistance is not received. The situation will generally involve multiple offenders, an escape, or a hostage situation.

(3) Law Enforcement Agency or Department is defined as the [--The] Texas Department of Public Safety (DPS), including the Texas Rangers; a municipal police department; a county sheriff's department; [or] a federal law enforcement agency; a university police department; a campus police department; or a school district police department.

(4) Non-Agent Private prison or jail [prison/jail] is any [--Any] privately operated or owned prison or jail in Texas that does not have a contract with the TDCJ to house TDCJ offenders.

(5) TDCJ Facility is any [--Any] facility operated by or under contract with the TDCJ.

(b) Policy. It is the policy of the TDCJ to assist law enforcement agencies or departments requesting assistance in an emergency situation that presents an immediate or potential threat to public safety, such as [(e.g.,] apprehending an escapee of a municipal or county jail or a privately operated or federal correctional facility[)], if the TDCJ determines that providing assistance will not jeopardize the safety and security of the TDCJ and its personnel.

(c) Procedures.

(1) Request for Assistance.

(A) If a non-agent private prison or jail [prison/jail] believes that an emergency situation has arisen, it must immediately notify the nearest law enforcement agency in order to qualify for the TDCJ's assistance. In the case of a non-agent private prison or jail [prison/jail] that operates a facility holding county inmates, the facility must first notify the county sheriff in order to qualify for the TDCJ's assistance.

(B) The law enforcement agency shall then determine whether the situation is indeed an emergency situation as defined in subsection (a)(2) of this section [rule]. If the situation is determined to be an emergency [so], the law enforcement agency shall identify the scope of assistance being requested by consulting with the non-agent private prison or jail [prison/jail] to determine:

(i) Number and type of personnel needed;

(ii) Number and type of vehicles needed;

(iii) Amount and type of riot equipment needed;

(iv) Number and type of weapons needed, including [(to include] chemical agents[)];

(v) Number of tracking pack or scent specific canines needed; and

(vi) Number of horses needed.

(C) After a Texas Ranger, DPS sergeant or higher ranking officer [above], county sheriff, or municipal police chief reviews the information gathered in subsection (c)(1)(B) of this section [rule] and concurs with the scope of assistance required from the TDCJ, law enforcement agency staff may call the nearest TDCJ facility's warden or designee [Warden/Facility Administrator or Duty Warden/Facility Administrator] to request assistance. The law enforcement agency shall describe the assistance being requested and agree to have a representative available to take an active role at the site of the emergency situation when the TDCJ team arrives.

(2) Approval.

(A) The TDCJ warden or designee [Warden/Facility Administrator or Duty Warden/Facility Administrator] shall contact the appropriate Correctional Institutions Division (CID) regional director [Regional Director] for approval to render assistance. The regional director [Regional Director] may agree to provide assistance if the assistance [such] shall not jeopardize the safety and security of the TDCJ and its personnel.

(B) Once the TDCJ's assistance is approved, the warden or designee [Warden/Facility Administrator or Duty Warden/Facility Administrator] shall, in conjunction with the [appropriate] CID regional director [Regional Director], determine what requested resources shall be sent, based on the assessment of the information received as well as concurrent TDCJ [Agency] needs. The warden or designee [Warden/Facility Administrator or Duty Warden/Facility Administrator] shall designate the senior member [members] of the TDCJ emergency assistance team.

(3) Emergency Assistance.

(A) The responding TDCJ facility shall report the request for assistance and the facility's response to the Emergency Action Center (EAC) in accordance with AD-02.15, "Operations of the Emergency Action Center and Reporting Procedures for Serious or Unusual Incidents." The warden or designee [Warden/Facility Administrator or Duty Warden/Facility Administrator] shall be responsible for all follow-up actions as required by the directive.

(B) Arrival at the Emergency Situation Site.

(i) Upon arrival at the scene of the emergency situation site, the senior member of the TDCJ team shall be briefed by the representative of the law enforcement agency, department, [and/or] non-agent private prison or jail [prison/jail] required by subsection (c)(1)(C) of this section [rule].

(ii) The senior member of the TDCJ team shall have sole discretion as to which TDCJ resources shall be deployed.

(C) The senior member of the TDCJ team shall be in charge of the TDCJ resources, to include personnel, at all times.

(D) If the emergency situation requires the use of tracking pack or scent specific canines, the requirements of AD-03.26, "Use and Training of Tracking Pack and Scent Specific Canines," shall be followed.

(d) Reimbursement for Assistance. The non-agent private prison or jail [prison/jail] shall reimburse the TDCJ for all assistance rendered, to include the cost of employees, equipment, and supplies, as well as a minimum of $1,000 for administrative overhead expenses. The TDCJ executive director [Executive Director of the TDCJ] may waive this requirement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2012.

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Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9693

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.33

The Texas Board of Criminal Justice proposes amendments to §163.33, concerning Community Supervision Officers. The proposed amendments are necessary to update the requirements for and training of Community Supervision Officers.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be certified and well-trained community supervision officers. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §509.008 and §509.009.

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003.

§163.33. Community Supervision Officers.

(a) Eligibility. To [~~In accordance with Texas Government Code §76.005, to~~] be eligible for employment as a community supervision officer [~~Community Supervision Officer~~] (CSO) who supervises offenders, a person:

(1) Must [~~Shall~~] have a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

[~~(2) Unless the bachelor's degree is in criminal justice, criminology, corrections, counseling, human services development, law, law enforcement, police science, pre-law, public administration, rehabilitative studies, social work, psychology or sociology, the person shall have:~~]

[~~(A) A minimum of one (1) year of graduate study in one (1) of the fields listed in (a)(2) of this rule; or~~]

[~~(B) A minimum of one (1) year of experience in full-time casework, counseling or community or group work; or~~]

[~~(C) Other education or experience, documented by letter in the employee's personnel file indicating the employee was the most qualified applicant at the time of hiring. Such letter shall be signed by the Community Supervision and Corrections Department (CSCD) director.~~]

(2) [~~(3)~~] Cannot be employed as a peace officer or work as a reserve or volunteer peace officer; and

(3) [~~(4)~~] Cannot currently be on community supervision, parole, or serving a sentence for a criminal offense.

(b) Training.

(1) The CSCD directors and assistant directors, community corrections facility [~~Community Corrections Facility~~] (CCF) directors and assistant directors, CSO supervisory staff, CSOs, and residential CSOs with less than four [~~(4)~~] years of experience shall complete not less than 80 documented hours of professional[~~, skill-based~~] training each biennium.

[~~(A) At least 40 of the hours shall be professional, skill-based training with topics related to the case management work of a CSO.~~]

(A) [~~(B)~~] Up to 40 hours in excess of the 80 required hours may be carried over to the next biennium.

(B) [~~(C)~~] A certified CSO who fails to complete the required 80 hours of training within a biennium shall be ineligible to continue serving as a CSO until the required hours are completed. A CSO who is exempt from certification as defined in subsection (c)(4) of this section [~~rule~~] and fails to complete the required 80 hours of training within a biennium, shall be ineligible to continue serving as a CSO until the required hours are completed.

(2) CSCD directors and assistant directors, CCF directors and assistant directors, CSO supervisory staff, CSOs, and residential CSOs with four [~~(4)~~] or more years of experience at the close of business on August 31 of any biennium, regardless of when the four years experience is achieved, will qualify for a reduced number of training hours per biennium at the beginning of the next biennium. Eligible, experienced staff shall complete at least 40 documented hours of professional[~~, skill-based~~] training each biennium.

(A) Up to two [~~(2)~~] of the four [~~(4)~~] years of required experience may have been earned through work in juvenile probation or parole, adult parole, or similar work in other states. At least two [~~(2)~~] of the required four [~~(4)~~] years shall have been earned as a full-time, wage-earning officer in Texas community supervision. The required four [~~(4)~~] years need not be continuous.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium.

(C) A certified CSO who fails to complete the required 40 hours of training within a biennium shall be ineligible to serve as a CSO until the required hours are completed. A CSO who is exempt as defined in subsection (c)(4) of this section [~~rule~~] from certification and fails to complete the required 40 hours of training within a biennium, shall be ineligible to serve as a CSO until the required hours are completed.

(3) A training program that specifies behavioral learning objectives for the participants, as a result of the training program, and the participants learn a skill or gain specific knowledge in actual day-to-day community supervision work [~~Training that meets the following criteria~~] shall be considered professional[~~, skill-based~~] training.[~~:~~]

[~~(A) The training program specifies behavioral learning objectives for the participants, as a result of the training program, and the participants learn a skill or gain specific knowledge in actual day-to-day community supervision work.~~]

[~~(B) Case management topics may include, but not be limited to, knowledge that reinforces and/or updates a current skill, or are related to evidence based practices, motivational interviewing, progressive sanctions or specific knowledge to enhance the participants'~~

~~performance. Professional, skill-based sessions are distinguished from information dissemination sessions.]~~

(4) The CSCD director or designee shall ensure that training records for all staff identified in subsections (b)(1) and (2) of this section [~~rule~~] are maintained and available for Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) [~~Texas Department of Criminal Justice - Community Justice Assistance Division (TDCJ-CJAD)~~] auditors. Those records shall reflect the following for each staff member:

(A) The number of training hours accrued and the dates of the training;

(B) The specific training programs attended with supporting documentation;

(C) The number of accrued hours and the number of hours approved by the CSCD director as professional[~~, skill-based~~] training; and

(D) The number of training hours carried over from one [~~(1)~~] biennium to another.

(c) New CSO Certification. A newly hired CSO shall complete the certification course work and achieve a passing grade on the certification examination within one [~~(1)~~] year of the beginning date of employment as a CSO.

(1) A new, uncertified CSO who fails to achieve certification within one [~~(1)~~] year of the CSO's employment date may not continue to be employed as a CSO beyond the specific date by which the CSO is to have achieved certification unless the TDCJ CJAD [~~TDCJ-CJAD~~] has granted an extension for the completion of course work and the examination as allowed by law.

(2) A new, uncertified CSO, who completes the certification course work but fails to achieve a passing grade on the certification examination shall be allowed to take the examination a second time. A CSO who fails the examination a second time[~~,~~] shall complete the certification course work again before being allowed to take the examination for the third and final time.

(3) CSOs are eligible to pursue certification two [~~(2)~~] years after the last testing date and are ineligible to supervise direct cases until certification is achieved.

(4) A CSO who was employed by any CSCD in Texas on or before September 1, 1989, is exempt from the requirements of the certification program.

(d) Exempt CSO Certification. Certification course work and the certification examination shall be available to those CSOs who were appointed prior to September 2, 1989. An exempt CSO who wishes to be certified shall be given one [~~(1)~~] opportunity to pass the certification examination in order to be certified. If the exempt CSO fails the examination, the CSO shall complete the certification course work before attempting to pass the examination again.

(e) Residential CSO Certification. A residential CSO, who was employed or appointed as such on or after September 2, 1989, shall satisfactorily complete the residential certification course work and examination offered by the TDCJ CJAD [~~TDCJ-CJAD~~] not later than the first anniversary of the date on which the CSO began employment with the CSCD residential facility. Provisions of subsections (b) through (g) of this section [~~rule~~] shall also apply to any residential CSO.

(f) Recertification upon Re-employment.

(1) A CSO who is subject to the certification provisions of subsection (c) of this section [~~rule~~] and who leaves the employment of a Texas CSCD for more than one [~~(1)~~] year after having been employed as a CSO for one [~~(1)~~] year or longer is required to become recertified. Such recertification shall be accomplished within one [~~(1)~~] year of re-appointment through the CSO taking and achieving a passing grade on the CSO examination. If the CSO fails the examination, the CSO shall complete the CSO certification course work and achieve a passing grade on the examination to be recertified.

(2) A CSO who is subject to the certification provisions of subsection (c) of this section [~~rule~~] and who leaves the employment of a Texas CSCD for more than one [~~(1)~~] year after having been employed as a CSO for less than one [~~(1)~~] year shall be recertified. Such recertification shall be accomplished within one [~~(1)~~] year of re-appointment through the CSO's completion of the CSO certification course work and achieving a passing grade on the examination.

(g) Certification Status. A CSO who fails to maintain CSO certification or residential certification by not completing the required hours of training in accordance with subsection (b) of this section [~~rule~~] is immediately ineligible to supervise direct cases until recertification is achieved. Recertification shall be immediately required by achieving a passing grade on the certification examination. An officer who fails the examination shall complete the certification course work for recertification.

(h) Dual Certifications. A residential CSO shall be certified as a CSO and obtain additional certification in residential service. A residential CSO shall complete both certification courses in the time frames specified in subsections (c) through (f) of this section [~~rule~~]. However, a residential CSO needs only to complete 80 hours, [~~(~~]or 40 hours for experienced CSOs and residential CSOs,[~~)~~] of professional[~~, skill-based~~] training related to community supervision and residential programs per biennium as specified in subsection (b) of this section [~~rule~~] to maintain both certifications.

(i) Residential Personnel Training.

(1) Initial Training Requirements. Within one [~~(1)~~] year from the date of employment with the facility, all direct care staff shall receive initial training in ethics; discrimination and sexual [~~discrimination /sexual~~] harassment; first-aid procedures; cardiopulmonary resuscitation (CPR) procedures; and HIV/AIDS education. Direct care staff shall continue to receive the training dictated by the guidelines of the granting authority that provided the initial training in first aid and CPR procedures. All direct care staff shall receive residential staff training offered by the TDCJ CJAD within the first anniversary year of their hire date.

(2) All residential direct care staff, including vendor staff, of a residential facility, with less than four [~~(4)~~] years of experience at the close of business on August 31 of any biennium, shall be required to complete a minimum of 40 hours of documented professional[~~, skill-based~~] training per biennium.

(A) A minimum of 20 training hours per biennium shall be specific to the needs of the offender population served by the facility.

(B) Up to 20 hours in excess of the 40 required hours may be carried over to the next biennium. All direct care staff of a residential facility shall receive case management training offered by the TDCJ CJAD [~~TDCJ-CJAD~~] before the first anniversary of their hire date.

(3) Direct care residential staff with four [~~(4)~~] or more years experience at the close of business on August 31 of any biennium, regardless of when the four years experience is achieved, will qualify for a reduced number of training hours per biennium at the beginning to the next biennium. Eligible, experienced staff shall [~~be required to~~]

complete at least 20 documented hours of professional[~~, skill-based~~] training each biennium.

(A) A maximum of two [~~(2)~~] years of prior employment as a correctional officer or direct care staff in a juvenile facility, jail, parole facility, state jail facility, prison, contract (private vendor) residential facility, or similar work in a facility in another state may be counted toward the four [~~(4)~~] year experience requirement. At least two [~~(2)~~] of the required four [~~(4)~~] years shall have been as a full-time, wage earning direct care staff in a CCF funded by the TDCJ CJAD [~~TDCJ-CJAD~~] in Texas. The required four [~~(4)~~] years need not be continuous.

(B) The reduced number of hours of required professional[~~, skill-based~~] training for the direct care residential staff who have at least four [~~(4)~~] years of experience shall not affect or reduce the training requirements regarding CPR, first aid, or defensive driving. A maximum of 10 [~~ten (10)~~] hours earned in excess of the 20 required hours, may be carried over to the next biennium. Any member of the direct care residential staff who fails to complete the required 20 hours of training within a biennium shall be ineligible to serve as direct care residential staff until the required hours are completed.

(4) Defensive Driving. All direct care staff whose primary duties include transporting offenders shall attend a defensive driving course by the first anniversary of their hire date. Direct care staff shall take defensive driving courses as needed to maintain certification.

(5) The CSCD director shall have a written policy that requires the maintenance of training records for each employee and vendor staff that reflect:

(A) The number of training hours accrued and the dates of the training;

(B) The specific programs attended with supporting documentation;

(C) The number of accrued hours and the number of hours approved by the CSCD director as professional[~~, skill-based~~] training; and

(D) The number of training hours carried over from one [~~(1)~~] biennium to another.

(j) Supervision Officers of Substance Abuse Felony Punishment Facility (SAFPF) Program Participants. CSOs who supervise participants in the SAFPF program shall be required to attend and complete the TDCJ CJAD [~~TDCJ-CJAD~~] approved training designed specifically for officers who supervise SAFPF program participants during the course of treatment in a SAFPF and in the continuum of care component of the SAFPF program. The required training shall be completed within 12 months of being assigned supervision of SAFPF program participants, unless the TDCJ CJAD [~~TDCJ-CJAD~~] has granted an extension for completion of the course work. CSOs who supervise SAFPF program participants as of the adoption date of this requirement and who have not attended the required training, shall complete the training within 12 months of the adoption date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9693

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37 TAC §163.35

The Texas Board of Criminal Justice proposes amendments to §163.35, concerning Supervision. The proposed amendments are necessary to revise the intrastate transfer process and to provide a specific definition of absconder.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be to protect the public safety. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §509.003

Cross Reference to Statutes: Texas Government Code §492.013 and §509.003

§163.35. Supervision.

(a) Definitions. The following words and terms, when used in this section, shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) Absconders refers to persons who are known to have left the jurisdiction without authorization or who have not personally contacted their community supervision officer (CSO) within three months or 90 days, and either:

(A) have an active Motion to Revoke (MTR) or Motion to Adjudicate Probation filed and an unserved capias for his or her arrest; or

(B) have been arrested on an MTR or Motion to Adjudicate Probation, but have failed to appear for the MTR hearing and a bond forfeiture warrant has been issued by the court.

(2) [~~(1)~~] Case refers to an [~~Case--An~~] offender assigned to a [~~community supervision officer (~~]CSO[~~)~~] for supervision.

(3) [~~(2)~~] Direct Supervision refers to offenders [~~Supervision--Offenders~~] who are legally on community supervision and who work or reside in the jurisdiction in which they are being supervised and receive a minimum of one [~~(1)~~] face-to-face contact with a CSO every three [~~(3)~~] months. Direct supervision begins at the time of initial face-to-face contact with an eligible CSO. Local community supervision and corrections departments [~~Community Supervision and Corrections Departments~~] (CSCDs) may maintain direct supervision of offenders living or [~~and/or~~] working in adjoining

jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

(4) [~~(3)~~] Face-to-face Contact is when a [~~Contact--A~~] CSO communicates in person with the offender.

(5) [~~(4)~~] Field Visit is when a [~~Visit--A~~] CSO communicates in person with the offender at the offender's place of residence or at another location outside the CSCD office.

(6) [~~(5)~~] Indirect Supervision is when [~~Supervision--Maintenance of a file and/or record of~~] an offender [~~under supervision who~~] meets one [~~(1)~~] of the following criteria:

(A) an offender who neither resides nor works within the jurisdiction of the CSCD and who is supervised in another jurisdiction; [~~receives the supervision in other jurisdictions;~~]

(B) an offender who neither resides nor works within the jurisdiction but continues to submit written reports on a monthly basis because the offender is ineligible or unacceptable for supervision in another jurisdiction;

(C) an offender who has absconded or who has not contacted the CSO in person within three [~~(3)~~] months;

(D) an offender who resides or works in the jurisdiction, but who, while in compliance with the orders of the court, does not meet the criteria for direct supervision; or

(E) an offender who resides and works outside the jurisdiction but reports in person and who does not fall under paragraph (3) [~~(2)~~] of this subsection.

(b) System of Offender Supervision. The CSCD directors shall develop a system of offender supervision that is based upon, but not limited to:

(1) the jurisdiction's profile of revoked offenders;

(2) the jurisdiction's profile of offenders under direct community supervision;

(3) the offender's identified risk and needs;

(4) availability of sanctions, programs, services, and community resources;

(5) applicable law and Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) [~~Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ-CJAD)~~] standards and policies; and

(6) policies of the local judiciary.

(c) Supervision Process. CSOs shall provide direct supervision for cases to include, but not be limited to, the following tasks:[;]

(1) Orientation and Intake [~~Orientation/Intake~~]. An orientation and intake [~~orientation/intake~~] session with the offender shall be conducted after the court has placed the offender under supervision. This session shall include a thorough discussion of the conditions of community supervision and terms of release. The CSO shall determine that the offender has received a copy of the conditions of community supervision or terms of release ordered by the court as provided by law.

(2) Assessments. An assessment process that gathers relevant and valid information shall be completed on every offender. This process shall specifically address the offender's risk factors, need areas, obstacles to meeting those needs, offender strengths, and offender resources. The CSO shall request specialized assessments for offenders when it is determined that alcohol or drug abuse contributed to the offense and pursue specialized evaluations when they would significantly assist in the development of appropriate supervision plans for special needs offenders.

(3) Case Classification. Within two [~~(2)~~] months of the date of community supervision placement, acceptance of a transfer case or discharge from any residential facility, jail, or institution, the CSO shall complete an approved TDCJ CJAD [~~TDCJ-CJAD~~] case classification instrument to assist in the evaluation of the degree of supervision needed by each individual based on the offender's risk and [~~and/or~~] needs. Within 10 [~~ten (10)~~] working days of the date of an offender's admission to a community corrections facility [~~Community Corrections Facility~~] (CCF), the CSO assigned to supervise the offender in the facility shall complete the TDCJ CJAD [~~TDCJ-CJAD~~] case classification and assessment [~~classification/assessment~~] instrument.

(4) Strategies for Case Supervision (SCS) Assessments. Within two [~~(2)~~] months of the date of community supervision placement, acceptance of a transfer case or discharge from any residential facility, jail, or institution, the CSO shall conduct a SCS assessment on each felony offender classified as maximum on case classification, unless a SCS was previously completed. While the SCS assessment may be a useful case management tool, it is not required for offenders during participation in residential programs.

(5) Case Supervision or Treatment Plan. Within two [~~(2)~~] months of the date of the most recent community supervision placement, acceptance of a transfer case or discharge from any residential facility, the CSO shall develop a written individualized case supervision or treatment plan based on the offender's risk and need factors to address specific problem areas and assist the offender to achieve responsible behavior. The supervision or treatment plan shall be completed within 10 [~~ten (10)~~] working days from the date of an offender's admission to a CCF.

(6) Reassessments. CSOs shall reevaluate risk and need factors and supervision plans at least every 12 months for all direct cases. An approved TDCJ CJAD [~~TDCJ-CJAD~~] reassessment shall be completed any time a significant change occurs in the status of the offender. Any necessary modification of the supervision plan shall be indicated in writing in the case file. Upon discharge from a residential facility, the CSO assigned to supervise the offender in the facility shall complete a discharge plan.

(7) Supervision Contacts. CSOs shall make face-to-face, field visit, telephone, and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at increased levels of supervision because of assessments of greater risk or special needs shall receive a higher level of contacts than offenders at lower levels of supervision. The nature and extent for supervision contacts with offenders shall be specified in the CSCD's written policies and procedures.

(8) Documentation in Supervision Case Files. CSOs shall use a problem oriented record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including, but not limited to, the offender's status regarding the level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(9) Violations. CSCD directors shall establish [~~work in conjunction with the local judiciary to specify~~] written policies and procedures that require [~~under Texas Code of Criminal Procedure, art. 42.12, §10 wherein the~~] CSOs to [~~may~~] make recommendations to the

courts regarding violations of the conditions of community supervision, as well as when violations may be handled administratively. The availability of progressive interventions and sanctions as alternatives to incarceration and incentives shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(10) Intrastate Transfers. The standards strive to ensure public safety by recognizing the need of the sending and receiving jurisdictions to continue control and supervision over these offenders.

(A) Except in cases of non-CSCD residential facility placements, supervision shall be transferred if an offender meeting the definition of direct supervision will be in another jurisdiction for more than 30 days, except when the designated representatives of the two [~~(2)~~] CSCDs agree there is good cause for the original jurisdiction to maintain supervision. Only the court retaining jurisdiction over an offender has the authority to modify or alter a condition of community supervision. The CSCD directors shall ensure that CSOs providing direct supervision to offenders transferred from other Texas jurisdictions shall fully enforce the order of the court that placed an individual on community supervision. It is the responsibility of the offender to comply with the conditions of community supervision as imposed by the court. The CSCD directors shall ensure that CSOs provide the same level of supervision to courtesy cases as they do for the offenders in their jurisdiction. The documents necessary for transfer shall include[~~,~~] the transfer form, the court order placing the offender on community supervision citing all conditions of community supervision, the offense report, criminal history, state identification (SID) or [~~and/or~~] personal identifier (PID) number [~~(~~]within 90 days of transfer to the receiving jurisdiction[~~)~~], the pre and post-sentence [~~pre/post-sentence~~] investigation report where legally mandated and any assessments that have been completed. The CSCD directors who decline or cease to provide courtesy supervision to offenders from other jurisdictions shall immediately notify, in writing, the original jurisdiction of the reasons for declining [~~or closing~~] supervision. The CSCDs that cease to provide courtesy supervision to offenders from other jurisdictions for violations other than absconding shall consult with the original jurisdiction before closing supervision. They will then notify the original jurisdiction, in writing, of the reason for closing supervision.

(B) Dual Supervision: The court retaining jurisdiction over an offender may also order the offender to report to the original jurisdiction as well as the jurisdiction where the offender resides or [~~and/or~~] works.

(11) Transporting Offenders. CSOs shall not transport offenders held in a county jail pursuant to an arrest warrant. All other transportation of offenders shall be in accordance with the CSCD's policies or [~~and/or~~] pursuant to a court order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
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37 TAC §163.38

The Texas Board of Criminal Justice proposes amendments to §163.38, concerning Sex Offender Supervision. The proposed amendments are necessary to add clarity and conform to state law.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five-year period the rule will be in effect the anticipated public benefit, as a result of enforcing the rule, will be to enhance public safety through the effective supervision of sex offenders. There will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §76.016 and §509.003 and Texas Code of Criminal Procedure Article 42.12 and Chapter 62.

Cross Reference to Statutes: Texas Government Code §492.013.

§163.38. Sex Offender Supervision.

(a) Definitions.

(1) Jurisdictional Authority is a [~~--A~~] sentencing court, the Board of Pardons and Paroles (BPP), or a division of the Texas Department of Criminal Justice (TDCJ) as applicable to the offender.

(2) Sex Crime is a [~~--A~~] reportable offense under Texas Code of Criminal Procedure (TCCP) art. [~~Art.~~] 62.001(5); an offense identified by Texas Penal Code; laws of the United States, another state, or another country; or the Uniform Code of Military Justice as a sexual offense.[~~, Texas Code of Criminal Procedure (TCCP).~~]

(3) Sex Offender is an [~~--An~~] offender who:

(A) Is convicted of committing or adjudicated to have committed a sex crime [~~under state or federal law~~];

(B) Is awarded deferred adjudication for a sex crime [~~under state or federal law~~]; or

[~~(C) Is convicted of, adjudicated to have committed, or awarded deferred adjudication for an offense that is based on sexually motivated conduct; or~~]

(C) [~~(D)~~] Has been ordered by the jurisdictional authority to participate in sex offender supervision or treatment.

(b) Community supervision and corrections departments [~~Supervision and Corrections Departments~~] (CSCDs) supervising sex offenders shall ensure consistency in the manner in which sex offenders are supervised throughout the department. Policies and procedures shall be developed that, at a minimum, include the following:

(1) Contact standards as per 37 Texas Administrative Code (TAC) §163.35(c)(7);

(2) Sex offender registration as per TCCP[~~,~~] Chapter 62,[~~:~~]

(3) DNA collection as per TCCP[,] art. 42.12, Sec. 11(a)(22);

(4) Violation procedures as per 37 TAC §163.35(c)(9);

(5) Victim services as per Texas Government Code[,] §76.016;

(6) Treatment referral process as per TCCP[,] art. 42.12, Sec. 13B(c);

(7) Treatment participation requirements;

(8) Team approach to supervision;

(9) Sharing of information and documentation [~~information/ documentation~~] with the appropriate agencies; and

(10) Specialized caseload size, if applicable.

(c) CSCDs shall develop policies and procedures that address the needs and safety of victims or potential victims. The policies may include collaborating with victims, victim advocates, or sexual assault task forces in the supervision and treatment of sex offenders.

(d) Community supervision officers [~~Supervision Officers~~] (CSOs) shall use a record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including the offender's status regarding level of supervision, compliance with the conditions of community supervision, progress with the supervision plan, and responses to intervention.

(e) CSOs shall collaborate with collateral sources. Collateral sources may include treatment providers, polygraph examiners, significant others, sex offender registration personnel, sex offenders' families, local law enforcement, schools, Children's Protective Services (CPS), employers, chaperones, and victim service providers.

(f) CSOs shall recommend that conditions be tailored to the sex offender's identified risk.

(g) CSOs shall make face-to-face, field visits and collateral contacts with the offender, family, community resources, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCDs written policies and procedures.

(h) CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures wherein CSOs may make recommendations to the courts regarding violations of conditions of community supervision, as well as when violations may be handled administratively. The availability of the continuum of sanctions or alternatives to incarceration shall be considered by the CSO and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(i) CSOs shall timely transmit information regarding supervision and treatment at the time supervision is transferred.

(j) In addition to the above, CSCDs may operate specialized caseloads for sex offenders. In this event, CSCDs shall have a written policy that:

(1) Establishes minimum qualifications for CSOs supervising sex offenders;

(2) Determines the minimum training requirements for CSOs supervising sex offenders; and

(3) Specifies the number of staff required for the increased level of supervision essential for the specialized supervision of sex offenders. The recommended CSO to offender ratio is 1 [~~one (1)~~] to 45.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206323
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: January 20, 2013
For further information, please call: (512) 463-9693

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Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §§352.1, 352.3, 352.5, 352.7, 352.9, 352.11, 352.13, 352.15, 352.17, 352.19, 352.21

The Texas Health and Human Services Commission (HHSC) adopts new Chapter 352, concerning Medicaid and the Children's Health Insurance Program Provider Enrollment, consisting of §§352.1, 352.3, 352.5, 352.7, 352.9, 352.11, 352.13, 352.15, 352.17, 352.19, and 352.21. New §352.11 and §352.15 are adopted with changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8107) and will be republished. New §§352.1, 352.3, 352.5, 352.7, 352.9, 352.13, 352.17, 352.19, and 352.21 are adopted without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8107) and will not be republished.

Background and Justification

The Affordable Care Act (ACA), which includes new provider enrollment requirements for Medicare, Medicaid, and the Children's Health Insurance Program (CHIP), adds new Subpart E - Provider Screening and Enrollment, to Part 455, under Title 42, Code of Federal Regulations (CFR). The federal requirements became effective on March 25, 2011; however, the final federal guidance from the Centers for Medicare and Medicaid Services (CMS) was not available at that time. The states continue to receive guidance from CMS on implementing the federal provider screening and enrollment requirements. The new rules are necessary to bring Texas Medicaid and CHIP into compliance with the new federal requirements related to provider enrollment.

The new federal provisions include:

- Requirements for providers to re-enroll in Medicare, Medicaid, and CHIP every three to five years. The time between re-enrollment is determined by the level of risk and assessed by the federal or state agencies.

- Pre- and post-enrollment site visits conducted as part of provider enrollment.

- Stricter ownership and control interest guidelines for corporations and groups.

- Fingerprinting requirement for provider types determined to have a high level of risk.

- Collection of application fees from institutional providers.

- Sharing of collected information between the state programs and the federal government.

Related to this adoption, HHSC is adopting the repeal of §§354.1006, 354.1173, and 354.1442 elsewhere in this issue of the *Texas Register.*

Comments

During the public comment period, which included a public hearing in Austin on November 2, 2012, HHSC received comments from the following organizations: Texas Association for Home Care & Hospice, Travis Medical, Medco Medical Supply, Texas Rehab Providers' Council, Disposable Supplies Coalition, Texas Medical Association, Texas Pediatric Society, Texas Academy of Family Physicians, American Congress of Obstetricians and Gynecologists/ Texas Chapter, National Association of Social Workers/ Texas Chapter, Home Care Delivered in VA, Kids Care Therapy, and The Surety & Fidelity Association of America. A summary of the comments and HHSC's responses follow.

Comment: Four comments were received related to §352.3, Definitions. The commenters stated the definition of "health care practitioner" is too broad and as written may include persons who are not eligible to enroll today, i.e., RNs or other providers who submit orders or referrals acting under physician supervision and delegation. The commenters further believe this language is inconsistent with federal direction and should be about providers that bill for services or are involved in other federal programs. The commenter's recommended that the definition be revised to read: A physician or non-physician licensed or certified by the State who is recognized by federal law or by HHSC as a provider who can bill for services or benefits and who is authorized under the State Medicaid plan to enroll.

Response: HHSC has reviewed the comment and the federal guidance and disagrees that the language is inconsistent with federal guidance. The Affordable Care Act applies to any provider who is recognized by CMS. In addition, this provision would apply to any provider recognized by the state to provide services or benefits under Medicaid or CHIP. The term "health care provider" is a global term used to encompass all providers in the health care arena who are eligible to enroll. Medicaid recognizes licensed and certified healthcare providers, but not all providers are licensed or certified by the State. Recognized providers also may be certified by federal entities or national organizations. HHSC does not agree with the deletion of "medical" because in this context, these are "medical services or benefits." HHSC does not agree with the recommended language "and who is authorized under the State Medicaid plan to enroll." The Medicaid State Plan does not address specific provider enrollment but it describes the services reimbursed

through Medicaid. No changes to the rules were made in response to this comment.

Comment: One commenter requested the term "Managing Employee" be included in the list of definitions under §352.3; and that any such definition be available for public review and comment.

Response: HHSC disagrees with the comment that the term "Managing Employee" needs defining. HHSC believes the term "Managing Employee" is clear. The term "managing employee" is used by CMS, and it is related to persons who must be disclosed to the State Medicaid agency under 42 CFR §455.104. No change to the rule was made in response to this comment.

Comment: Five commenters suggested that §352.5(a)(2)(B), Provider Enrollment Requirements, be deleted because it is redundant and not necessary. Four commenters suggested that §352.5(a)(2)(A) addresses the federal requirement that physicians or eligible professionals who order or refer must enroll and that §352.5(a)(2)(B) is not necessary. One commenter stated: This would require every rendering practitioner (which is not limited to a physician, NP or PA) to enroll.

Response: HHSC disagrees with the comment to delete §352.5(a)(2)(B). Section 352.5(a)(2)(A) relates to health care practitioners who order, refer, prescribe, certify, or provide Medicaid services or benefits. Section 352.5(a)(2)(B) is related to providers that supervise other health care providers that provide Medicaid services or benefits. These two provisions are separate in order to eliminate any provider confusion; they are not duplicative. In addition, HHSC disagrees that §352.5(a)(2)(B) requires every rendering practitioner to enroll. Individual providers are required to enroll if they fall under the definition of health care practitioner. No change to the rule was made in response to this comment.

Comment: HHSC received five comments suggesting deleting §352.5(b)(1) regarding the responsibility of the enrolling provider to conduct an internal review of any person or contractor associated with the provider to ensure they have not been excluded from participating in a program under Title XVIII, XIX or XXI of the Social Security Act. The commenters state this requirement is burdensome and unnecessary, because enrolling physicians in a large group practice may not have access to the records pertaining to owners, employees, or other physicians. The commenters mention that physicians currently enrolled in Medicaid are required to screen employees and contractors monthly for exclusions from the program. The commenters are concerned the rule does not contain a definition for "internal review" and does not include a process for reporting the results of the review. One commenter asked that the rule be clarified to ensure this requirement did not apply to all employees.

Response: HHSC disagrees with the commenters' recommendation to delete §352.5(b)(1). CMS highly recommends that the states require all providers to conduct an internal review of their employees, managing partners, owners, and contractors to ensure that none of these individuals, groups, or facilities has been excluded from participating in other federal and state programs. HHSC disagrees this requirement is overly burdensome. This requirement may impact the administration of a health professional practice, but the information should be available to the administrator of the practice or facility, because this information was required at the time of the practice's enrollment and disclosure. HHSC believes the term "internal review" is clear and the general public understands the term. The comment is based on a mistaken assumption that this provision to conduct an internal review applies to individual providers. This provision applies to providers with employees or contractors and does not apply to individual providers. The method of reporting related to the internal review is an attestation statement contained in the application that associated persons and entities have not been excluded from participation in federal or state programs. No change to the proposed rule was made in response to this comment.

Comment: HHSC received four comments about §352.5(b)(11), requesting the term "certify" be changed to "establish" related to a compliance plan, in order to be consistent with the federal requirements in the Social Security Act, §1866(j)(8).

Response: HHSC disagrees with the comment to change the term in §352.5(b)(11) from "certify" to "establish." HHSC must be able to monitor whether the provider has a compliance plan in place, not if the provider will establish a compliance plan. At the time of enrollment a provider must provide an attestation certifying that it has established a compliance plan. No change to the proposed rule was made in response to this comment.

Comment: HHSC received one comment regarding §352.7(a)(5) stating that compliance with the requirement will likely exceed a social worker's resources. The commenter did not understand why this provision is necessary.

Response: HHSC has reviewed this comment and believes it is based on a mistaken assumption that the rule regarding surety bonds directs all providers to submit a surety bond. Section 352.7(a)(5) requires a provider to submit a copy of the surety bond obtained pursuant to §352.5. Section 352.5 discusses provider enrollment prerequisites and instructs providers to obtain a surety bond, as applicable. Surety bonds are not required for social workers and certain other providers. Providers should refer to the appropriate section in Title 1, Part 15 of the Texas Administrative Code for the specific Medicaid service or provider type to determine if a surety bond is required. Section 352.15 outlines the requirements for the actual surety bond and is not specific to any provider type or service. This provision is necessary; if a surety bond is required, the bond must meet the criteria in §352.15 and must be submitted at the time of enrollment in order to proceed with enrollment. No change to the proposed rule was made in response to this comment.

Comment: HHSC received four comments about §352.7(b)(1) and (2), discussing the application fee. The commenters stated that under the federal rules, if a provider is required to pay an application fee under Medicare, an additional fee is not required to be paid to Medicaid. However, under the federal requirements, if a provider is not required to participate in Medicare, states must establish an application fee for Medicaid-only provider types. The federal rules specify a mechanism for requesting a hardship exemption from the fee. Yet, the state rules do not specify a similar process for Medicaid-only providers. They recommend consideration of a process for requesting a hardship exemption for Medicaid-only providers who do not participate in Medicare.

Response: HHSC disagrees that HHSC needs to establish a hardship exemption; CMS has defined the process. The states are directed to apply an application fee to Medicaid-only providers. States do not set the amount of the application fee. The hardship exemption process is related to the application fee established by CMS and defined in 42 CFR §424.514. A provider may request an exemption from the application fee when an access to care issue exists. The State reviews the request and submits the exemption request to the Secretary of

Health and Human Services. The Secretary must approve any exemption from the application fee. No change to the proposed rule was made in response to this comment.

Comment: HHSC received five comments regarding §352.9, Screening Levels. The commenters oppose the use of the term "geographical area" as a criterion for assigning risk levels based on waste, fraud, and abuse. The commenter further stated that CMS rejected the term in the final federal Medicare/Medicaid provider enrollment rules. A commenter suggested that geographical area is not defined in the Medicaid rules and leads to questions about the meaning of the term. One commenter suggested that geographical area is restrictive and is not related to a provider's risk potential.

Response: HHSC disagrees with the comments. The comments are based on a mistaken assumption that CMS rejected the term. In the final rule published in the *Federal Register* on February 2, 2011, CMS did not adopt geographical circumstances as a criterion; however, they reserved the authority to add the term in rule in the future for the purpose of revising the screening level for a provider or supplier. CMS also discussed imposing a moratorium if there were concerns about providers or suppliers in a particular geographical area. No change to the rule was made in response to this comment.

Comment: HHSC received two comments about §352.9(c)(3)(B), Screening Levels, and expressed concern with the requirement for providers to re-enroll every three to five years. The commenter is concerned that home health agencies may be subject to a re-enrollment time frame that is not consistent with the federal regulations to re-enroll every five years. The commenter expressed concern about the rule specifying a range without including any criteria for determining the actual time frame for re-enrollment. One commenter suggested that, in order to reduce duplication and avoid additional costs for providers, federal regulations direct states to utilize information from CMS and other states in order to determine the screening requirements.

Response: HHSC disagrees that the rule is inconsistent with federal regulations. This comment is based on a mistaken assumption that Texas Medicaid timelines for re-enrollment differ from Medicare. The time frame for newly enrolling or re-enrolling home health agencies is determined by CMS to be every five years. Texas Medicaid's time frame for home health agencies for re-enrollment is five years and is in alignment with Medicare. In response to the comment about CMS directing states to use the information from CMS and other states, 42 CFR §455.410, is permissive and allows states to use the information gained from previous screenings by CMS or other states. If a provider has enrolled in Medicare or another states Medicaid or CHIP program, HHSC will utilize the screening documents and information it can obtain from CMS or the other states Medicaid or CHIP program for enrollment purposes. In addition, if a provider has paid an application fee to Medicare or another state's Medicaid or CHIP programs, HHSC will accept proof of payment as satisfaction of that requirement.

Comment: HHSC received four comments regarding §352.9(d)(2)(A) in which the commenters incorrectly referenced the rule number. HHSC believes the correct reference is §352.11(d)(2)(A) related to the time frame to request an informal desk review after an application is denied. The commenters requested that HHSC revise the time frame in which a provider may request an informal desk review from 20 calendar days from the date of notice to 20 business days or 30 calendar days from the date a notice is received. The commenter stated that 20 calendar days was not enough time, because the provider could miss the deadline during very busy times of the year or if away from the office for an extended period of time.

Response: HHSC agrees to extend the time frame in which a provider may request an internal review from 20 to 30 calendar days and has changed the proposed language in response to the comment. However, HHSC did not change the operative date from the date of notice to the date of receipt. HHSC does not have a mechanism for monitoring the date an applicant received the denial notice. The agency can, however, track the date on the notice.

Comment: Four commenters were concerned that the language in §352.11(c)(2) regarding denial of an enrollment application for failure to repay an overpayment was vague and too broad. The commenters requested additional language to clarify that a denial for an overpayment only will be made upon completion of the physician's administrative appeals or hearing regarding the overpayment. In addition, the commenters suggest that providers should be allowed 30 days to repay the overpayment or to enter into an agreement with HHSC for repayment.

Response: HHSC disagrees with the comment. The language in the proposed rule is permissive and does not exclude the rights of the provider to request an administrative appeal or hearing and does not prohibit the provider from discussing repayment plans with the State. No changes to the rule were made in response to this comment.

Comment: HHSC received five comments regarding §352.11(c)(8), concerning enrollment application denials. The commenters expressed concern about the phrase "other reasons as determined by HHSC in its sole discretion." The commenters suggested the language was unfair and arbitrary. Four commenters suggested adding language outlining the criteria the agency will use to deny applications so that providers are notified of the reasons for a denied application. One commenter believed this phrase was unnecessary, because the reasons for a denied application were listed in §352.11(c)(1) - (5).

Response: HHSC disagrees with the comment that the language is unfair or arbitrary and the comment about this provision being unnecessary. This language is permissive and relates to an individual review of an application at the HHSC level to ensure all criteria are met and the provider is in good standing with federal and state requirements. HHSC wants to ensure that the most medically vulnerable population continues to receive needed services by qualified providers. HHSC reserves the right to make determinations regarding applicants into Texas Medicaid and CHIP. In addition, any determination by HHSC or its designee related to the application will be conveyed to the applicant in a letter explaining the reasons for the decision. No change to the rule was made in response to this comment.

Comment: HHSC received one comment related to §352.15, Surety Bonds. The commenter suggested that all providers that are enrolled in the system should be required to provide a surety bond. The protections provided by the surety bond support the role of HHSC of eliminating fraud and waste from the Medicaid system, and such protection should be required of all providers. The surety will provide HHSC with the pre-qualification of providers that are financially sound and will perform as required. Simply because the provider has had a clean history for a period of years does not guarantee that the provider will

never engage in fraud and abuse. The bond would be available to provide HHSC critical financial protection in such an event.

Response: Section 352.15 outlines the requirements for a surety bond if a bond is required. The proposed rules do not address to whom the surety bond applies. The comment reaches beyond the scope of the proposed rules. No change to the rule was made in response to this comment.

Comment: HHSC received four comments recommending the deletion of §352.15(a)(2), Surety Bonds. The commenters assert that §352.15(a)(1) is sufficient to allow HHSC to require a surety bond for a provider with a significant history of or potential to commit fraud, waste, or abuse.

Response: HHSC disagrees with the comment. The provisions in §352.15(a)(1) and (2) are two different requirements. Section 352.15(a)(1) addresses waste, fraud, and abuse. Section 352.15(a)(2) addresses other provider behaviors that are not related to waste, fraud, and abuse. No change to the rule was made in response to this comment.

Comment: HHSC received one comment requesting the deletion of the phrase "or potential" in §352.15(a)(1), Surety Bonds, because it is not understood what a potential for fraud, waste, or abuse means.

Response: HHSC disagrees with this suggestion to delete the phrase "or potential." The language is permissive as it related to requiring a surety bond. A provider or a provider type may be required to provide a surety bond if the provider is identified by federal or state agency as having a significant history or potential for waste, fraud, or abuse. Defining the term "potential" in this rule is not necessary, because it is related to identification by federal or state agencies where is a history or potential for fraud, waste, and abuse. If a surety bond were required for a provider or provider type, the provider would be notified of the reasons for the surety bond requirement. No change to the rule was made in response to this comment.

Comment: HHSC received four comments recommending a revision to the language in §352.15(g)(1) to clarify the uncollected overpayments in relation to the bond period.

Response: HHSC agrees to revise the language in §352.15(g)(1) to clarify that the Surety is liable for uncollected payments determined to have occurred during the term of the bond. The rule is modified to reflect this addition.

Comment: HHSC received seven comments recommending a revision to §352.15(f) to delete "or 15 percent of the annual payments made to the provider by Medicaid or CHIP." Three commenters were in support of the surety bond, but opposed to portions of the proposed rule that are inconsistent with Medicare. One commenter stated that Medicare requires: "Enrolled DMEPOS suppliers, subject to the bonding requirement, are required to obtain and submit $50,000 bond for each national Provider Identifier (NPI) by October 2, 2009 to the National Supplier Clearinghouse (NSC)." "DMEPOS suppliers must obtain an NPI by practice location, except for sole proprietorships." "The industry recommends that the language be changed to reflect Medicare requirement of not less than $50,000 per location." One commenter stated, "Based on the language in the proposed rule, it is unclear to us whether Medicaid Managed Care payments would be included in determining the bond amount."

Response: HHSC agrees to the deletion of the 15 percent requirement to more closely align with general language for surety bonds. HHSC reserves the right to propose revisions to the rule at a later time to clarify the surety bond application. The rule was revised to remove the phrase "or 15 percent of the annual payments made to the provider by Medicaid or CHIP."

Comment: One commenter was concerned that the requirement that the Surety be liable on the bond two years after its expiration is not required by Medicare, and the rule does not authorize the bond company to investigate the circumstances triggering the alleged liability. The commenter believes that these provisions would increase the cost of a surety bond and, therefore, increase the cost to Texas providers.

Response: The proposed language in §352.15(g)(2) reflects the federal regulation at 42 CFR §424.57(d)(5)(iii). The comment related to the authority of the Surety to investigate the circumstances of the alleged liability is unclear. No change to the rule was made in response to this comment.

Comment: HHSC received one comment recommending that the requirement for the surety bond be removed after three years if the provider has not engaged in any fraudulent activity or had an adverse action taken against the provider. The commenter also suggested that a provider must be required to obtain an additional $50,000 surety bond for that specific location if there is any adverse action taken by the state or if the state draws against the bond.

Response: HHSC is reviewing and considering the recommendation regarding an additional surety bond for potential future rulemaking. HHSC does agree to remove the language related to the "15 percent of the annual revenue" from the final rule as referenced in a previous comment.

Comment: HHSC received one comment about §352.19(a), Temporary Moratoria. The commenter is concerned that the rule does not include criteria addressing ensuring access to care. The commenter recommended including language that the State would not impose a moratorium if it adversely affects access to care.

Response: Section 352.19 provides that the State may impose a temporary moratorium in accordance with 42 CFR §455.470, which requires states to determine that imposing a moratorium would not adversely affect access to care. Therefore, HHSC believes no revision to the proposed language is necessary.

Comment: HHSC received four comments about §352.21, Duty to Report Changes. The commenter recommends that the duty to report be limited to the changes set out in subsections (a)(10) and (a)(11).

Response: HHSC disagrees with this recommendation, because any of the changes set out in §352.21(a) could also be related to a change in ownership. No change to the rule was made in response to this comment.

Comment: A commenter asked HHSC to consider adjusting the risk level of an individual provider who is a low risk for fraud, waste, and abuse but in a high risk category.

Response: For those provider types determined by CMS, the State has the flexibility to adjust the risk level of a provider type to a higher level but cannot adjust to a lower level. Medicaid-only and CHIP providers will be assigned a category of risk level for the overall enrolling provider type. No change to the rule was made in response to this comment.

Comment: HHSC received two general comments expressing concern about how quickly the rules were being implemented. One commenter recommended more clarification on site visits

and the processes for re-enrollment. The commenter expressed concern about the timeliness for approving re-enrollments and effects on authorization and claims if new National Provider Identifiers are issued. One commenter recommended that HHSC work with stakeholders on further revisions to the rules.

Response: In order for Texas Medicaid and CHIP to be in compliance with the Affordable Care Act and not place federal funding at risk, HHSC must complete re-enrollment of 100 percent of the providers by March 25, 2016. For HHSC to meet that timeline it must have rules in place to begin the enrollment process. HHSC submitted draft rules to stakeholders, including 20 associations, in March 2012. Stakeholders had the opportunity to review and offer comments on the rules prior to the Medical Care Advisory Committee meeting. In addition, at the request of certain stakeholders, individual meetings were held on July 2, 2012, and September 11, 2012, to obtain comments. A large stakeholder meeting was held on August 21, 2012. HHSC will continue to work with providers and stakeholders during the implementation of these new rules and will issue policy guidance on issues that arise. In addition, HHSC is working with the Medicaid claims administrator to address policy concerns by publishing information on the website as it becomes available regarding enrollment and re-enrollment. No change to the rules was made in response to this comment.

Statutory Authority

The new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program; and Health and Safety Code §62.051, which provides HHSC with the authority to administer the Children's Health Insurance Program (CHIP) in Texas.

§352.11. Provider Enrollment Determinations.

(a) HHSC or its designee, in its sole discretion, approves, conditionally approves, or denies each enrollment application submitted in accordance with the requirements of this chapter. HHSC or its designee provides notice of the enrollment determination to the applicant or re-enrolling provider.

(1) Approval. If an enrollment application is approved, the approval is for a time-limited period of participation as specified in the provider agreement or notice of the enrollment determination.

(2) Conditional approval. An enrollment application may be approved with conditions as specified in the notice of the enrollment determination.

(3) Denial. If an enrollment application is denied, HHSC will provide notice of the enrollment determination by certified mail to the address of record on the enrollment application. The reason or reasons for denial are specified in the notice.

(b) In rendering the enrollment determination, HHSC or its designee will consider the following:

(1) the applicant's or re-enrolling provider's compliance with the requirements of this chapter;

(2) the applicant's or re-enrolling provider's current or previous participation in Medicaid and CHIP;

(3) whether access to care is sufficient; and

(4) the recommendation of HHSC's Office of Inspector General made pursuant to Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity).

(c) HHSC or its designee may deny an enrollment application for:

(1) failure to meet the requirements of participation for the category of service provided;

(2) failure to repay an overpayment;

(3) termination from participation in the Medicare program;

(4) exclusion from participation in Medicaid or CHIP;

(5) failure to comply with Chapter 371 of this title;

(6) failure to provide true and accurate information during the enrollment process;

(7) failure to cooperate with required unscheduled and unannounced pre- and post-enrollment site visits; or

(8) other reasons as determined by HHSC in its sole discretion.

(d) If an enrollment application is denied, the applicant or re-enrolling provider may request that the determination be reviewed by:

(1) HHSC OIG, if the reason for denial is based on subsection (b)(4) of this section pursuant to §371.1015(c) of this title (relating to Types of Provider Enrollment Recommendations) and follow the process outlined in §371.1011 of this title (relating to Recommendation Criteria); or

(2) HHSC or its designee, if the denial is based on any other reason, as follows:

(A) The applicant or re-enrolling provider must submit a request for an informal desk review within 30 calendar days from the date of the notice.

(B) The request for an informal desk review must be made in writing, state the basis for disagreement, and describe any mitigating circumstances that would support a reconsideration of the enrollment determination.

(C) Upon conclusion of the resulting informal desk review, HHSC or its designee will send a written notice of the final enrollment determination to the address of record on the enrollment application.

(D) The final enrollment determination is not subject to further administrative review or reconsideration.

§352.15. Surety Bond Requirements.

(a) A surety bond may be required for each enrolled location pursuant to the requirements of this section if:

(1) a provider or type of provider has been identified by federal or state agencies to have a significant history of, or potential for, fraud, waste, or abuse; or

(2) HHSC, in its sole discretion, has determined that a provider, based on the provider's conduct, including falsifying information or any material misrepresentation, will be subject to this requirement.

(b) If a surety bond is required, a provider must maintain a current surety bond to continue participation in Medicaid or CHIP.

(c) HHSC or its designee will not reimburse a provider for items or services furnished during a period in which the provider does not have a current surety bond, if a surety bond is required.

(d) An entity operated or administered by a federal, state, local, or tribal government agency is exempt from the requirements of subsection (a) of this section if, during the preceding five years, the entity has not had any uncollected overpayments associated with Medicaid or CHIP.

(e) A surety bond required pursuant to this section must:

(1) include a statement that the surety company issuing the bond:

(A) is licensed by the Texas Department of Insurance; and

(B) maintains a valid Certificate of Authority with the United States Department of Treasury in accordance with 31 U.S.C. §§9304 - 9308 and Title 31 of the Code of Federal Regulations parts 223, 224, and 225 as a surety;

(2) state on the face of the bond the Parties, to include:

(A) the provider as Principal;

(B) HHSC as Obligee; and

(C) the surety company (and its heirs, executors, administrators, successors, and assignees, jointly and severally) as Surety; and

(3) include an effective date and expiration date for the bond.

(f) The amount of the surety bond must be no less than $50,000.

(g) The surety bond must provide that:

(1) the Surety is liable for uncollected overpayments determined to have occurred during the term of the bond, regardless of when the overpayments are discovered;

(2) the Surety remains liable:

(A) for an additional two years after the date of expiration of the bond for overpayments that occurred during the term of the bond, if the provider fails to furnish a new, updated, or renewed bond that meets the requirements of this section; and

(B) for an additional two years after the date the provider's participation is terminated for services provided during the bond period, if HHSC or its designee terminates the provider agreement;

(3) the Surety's liability to HHSC is not affected, diminished, or concluded by:

(A) any action by the provider or the Surety to terminate, reduce, or limit the scope or term of the bond;

(B) any action by the provider to:

(i) cease operation;

(ii) sell or transfer any assets or ownership interest;

(iii) file for bankruptcy; or

(iv) fail to pay the Surety; or

(C) the provider's failure to exercise available appeal rights under Medicaid or CHIP;

(4) the Surety's liability may be terminated only if:

(A) the Surety furnishes HHSC with written notice of its intent to terminate the bond no later than 30 days before the effective date of termination; or

(B) the provider furnishes HHSC with a new bond that meets the requirements of this section; and

(5) the Surety guarantees that upon receipt of written request for payment by HHSC or its designee, the Surety will reimburse Medicaid or CHIP the amount in the request up to the stated amount of the bond.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206313
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: October 12, 2012
For further information, please call: (512) 424-6900

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §354.1006, concerning Surety Bond Requirements; §354.1173, concerning Provider Certification/Enrollment in Medicare; and §354.1442, concerning Out-of-State Provider Eligibility, in Chapter 354, Medicaid Health Services. The repeals are adopted without changes to the proposal as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8115).

Background and Justification

The repeals are adopted to remove the Medicaid and Children's Health Insurance Program (CHIP) provider enrollment requirements regarding surety bonds, certification and enrollment in Medicare, and out-of-state provider eligibility from Chapter 354 and put them in new Chapter 352, Medicaid and Children's Health Insurance Program Provider Enrollment. New Chapter 352 is adopted elsewhere in this issue of the *Texas Register.* Provisions of the repealed rules have been modified and incorporated into the new rules in Chapter 352.

Comments

The 30-day comment period ended November 11, 2012. During this period, HHSC did not receive any comments related to the repeal of the rules. A public hearing was held on November 2, 2012, and no comments were received related to the repealed rules.

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1006

Statutory Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program; and Health and Safety Code §62.051, which provides HHSC with the authority to administer the Children's Health Insurance Program (CHIP) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1173

Statutory Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program; and Health and Safety Code §62.051, which provides HHSC with the authority to administer the Children's Health Insurance Program (CHIP) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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DIVISION 34. OUT-OF-STATE SERVICES

1 TAC §354.1442

Statutory Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program; and Health and Safety Code §62.051, which provides HHSC with the authority to administer the Children's Health Insurance Program (CHIP) in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER F. PHARMACY SERVICES

DIVISION 1. PARTICIPATION

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §§354.1801, 354.1803, 354.1809, and 354.1811, concerning requirements for participation, confidentiality, termination of participation, and provider sanctions. HHSC adopts new §354.1807 and §354.1813, concerning access to records and placing a pharmacy on vendor hold. HHSC adopts the repeals of §§354.1802, 354.1804, 354.1807, 354.1813, and 354.1815, concerning applications for participation, access to records, disclosure of criminal convictions, and definition of and reasons for placing a pharmacy on vendor hold. The amendment to §354.1801 is adopted with changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8116) and will be republished. The amendments to §§354.1803, 354.1809, and 354.1811, new §354.1807 and §354.1813, and the repeals of §§354.1802, 354.1804, 354.1807, 354.1813, and 354.1815 are adopted without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8116) and will not be republished.

Background and Justification

The changes to the rules governing participation in the Vendor Drug Program (VDP) are adopted in association with new rules in Chapters 352 and 371 of Title 1, Part 15. The rules in Chapters 352 and 371 are being adopted in order to comply with provisions of the Affordable Care Act (ACA). The ACA includes new enrollment requirements for providers of Medicare, Medicaid, and the Children's Health Insurance Program (CHIP) services, including providers of covered outpatient drugs. The adopted rules governing VDP pharmacy participation requirements reflect the adopted rules in Chapters 352 and 371 and clarify how they apply to pharmacies providing services under the Medicaid program.

The rules also include several changes not related to the ACA. HHSC is codifying the existing requirement that pharmacies must enroll in Medicaid in order to participate in CHIP, the Kidney Health Care program, or the Children with Special Health Care

Needs program. Additionally, HHSC is adding a new enrollment requirement for pharmacies that fill prescription drug orders for Medicaid clients on behalf of enrolled Medicaid pharmacies that submit claims (referred to as central fill pharmacies). These central fill pharmacies are not currently required to enroll in Medicaid and therefore have not been required to give HHSC access to their Medicaid records. It is important, however, that a pharmacy providing services for Medicaid clients, including a central fill pharmacy, adhere to certain Medicaid standards and allow HHSC access to records so that the agency can conduct post payment review. HHSC is also clarifying that claims are subject to post payment review and recoupment if fraud is discovered. This is a current VDP practice that HHSC seeks to codify in rule. The rules also update outdated language.

HHSC is adopting §354.1801(e) with changes to the proposed language to clarify that pharmacists are not required to enroll with Medicare to dispense the limited set of home health supplies on the Medicaid formulary, as defined in §354.1042.

Comments

During the public comment period, which included a public hearing in Austin on November 2, 2012, HHSC received a comment from the National Association of Chain Drug Stores.

Comment: In §354.1801(f) HHSC is proposing to require Class G pharmacies that "fill" prescriptions for Medicaid beneficiaries to enroll in the Medicaid program and be subject to pharmacy provider enrollment requirements. Class G pharmacies support Class A pharmacies that ultimately dispense prescriptions to Medicaid clients and do not directly dispense medication to patients. A Class A pharmacy is the pharmacy that bills Medicaid, receives compensation for services, and maintains all records of all prescription processing activity--including verifying data entry, orders, or performing drug utilization review on Class G pharmacies. It is suggested that HHSC strike this requirement from the rule.

Response: The language in §354.1801(f) as revised in the proposed version was intended to address previous concerns stakeholders had about requiring Class G pharmacies to enroll in Medicaid. HHSC is not intending to require "Class G" pharmacies to enroll in Medicaid and therefore, the reference to Class G pharmacies was stricken and the language was revised from "required" to "may be required to enroll" (in Medicaid) to allow HHSC to make enrollment determinations on a case by case basis. No changes were made to the proposed rule language in response to the comment.

1 TAC §§354.1801, 354.1803, 354.1807, 354.1809, 354.1811, 354.1813

Statutory Authority

The amendments and new rules are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1801. Requirements for Participation.

(a) For the purposes of this subchapter, "pharmacy provider" means a provider of outpatient pharmacy services enrolled in the Medicaid program.

(b) Any pharmacy who has a current license or registration with the Texas State Board of Pharmacy or is licensed under the laws of another state and is free from any pharmacy board restriction may apply to become a pharmacy provider. Prescribing practitioners who are authorized and licensed to practice the healing arts, as defined and limited by federal and state laws, and choose to provide their own pharmaceuticals may also apply to become pharmacy providers.

(c) Except as stated in §354.1809 of this title (relating to Termination of Participation), Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), and Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity), the Health and Human Services Commission (HHSC) and its designee maintain open enrollment for in-state pharmacies licensed as Class A or C by the Texas State Board of Pharmacy. Pharmacies holding any other class of pharmacy license may be subject to special application procedures.

(d) A pharmacy must be enrolled as a pharmacy provider to participate as a provider in the Children's Health Insurance Program (CHIP), the Kidney Health Care (KHC) program, or the Children with Special Health Care Needs (CSHCN) program.

(e) A pharmacy does not have to be enrolled in the Medicare program to dispense covered outpatient drugs or certain supplies as defined in §354.1042 of this title (relating to Supplies Provided by a Pharmacy) to clients enrolled in the Medicaid program.

(f) A pharmacy that fills prescriptions for Medicaid clients on behalf of an enrolled Medicaid pharmacy that submits Medicaid claims (e.g., a central fill pharmacy or a pharmacy that provides medication fulfillment services) may be required to enroll in accordance with Chapters 352 and 371 of this title and is subject to other participation requirements in this division, including §354.1807 of this division (relating to Access to Records).

(g) A pharmacy applying for enrollment as a pharmacy provider is subject to the enrollment and application requirements in Chapters 352 and 371 of this title.

(h) Claims are subject to post-payment review for compliance with state and federal laws and regulations and HHSC policy. Reimbursement paid to a pharmacy provider for claims that do not comply may be subject to recoupment of overpayment.

(i) HHSC may enter into special negotiated reimbursement arrangements with other state or local entities, such as a Department of State Health Services hospital, to maximize federal financial participation in state or locally funded programs. If a state or local entity is unwilling to participate in such an arrangement, a contract or agreement may be denied.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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1 TAC §§354.1802, 354.1804, 354.1807, 354.1813, 354.1815

Statutory Authority

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER B. UNDERWRITING, MARKET ANALYSIS, APPRAISAL, ENVIRONMENTAL SITE ASSESSMENT, PROPERTY CONDITION ASSESSMENT, AND RESERVE FOR REPLACEMENT RULES AND GUIDELINES

10 TAC §§1.31 - 1.37

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 1, Subchapter B, §§1.31 - 1.37, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines, without changes to the proposal as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7341) and will not be republished.

REASONED JUSTIFICATION. As part of the overhaul and reorganization of the Department's multifamily rules, staff recommended the creation of a new chapter of rules that brought together the pre and post award programmatic activities into one chapter. Therefore, the Board adopts the repeal of 10 TAC Chapter 1, Subchapter B, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment and Reserve for Replacement Rules and Guidelines, and concurrently adopts new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policy. The rules pertaining to Reserve for Replacement Requirements are moved to 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Texas Government Code, §2306.053, which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206300
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 27, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 10. UNIFORM MULTIFAMILY RULES

SUBCHAPTER D. UNDERWRITING AND LOAN POLICY

10 TAC §§10.301 - 10.307

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") adopts new 10 TAC Chapter 10, Subchapter D, §§10.301 - 10.307, concerning Underwriting and Loan Policy, without changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7366) and will not be republished.

REASONED JUSTIFICATION. As part of the overhaul and reorganization of the Department's multifamily rules, staff recommended the creation of a new chapter of rules that bring together definitions and award programmatic activities into one chapter. Therefore, the Board adopts new 10 TAC Chapter 10, Subchapter D, concerning Underwriting and Loan Policies, and concurrently adopts the repeal of 10 TAC Chapter 1, Subchapter B, concerning Underwriting, Market Analysis, Appraisal, Environmental Site Assessment, Property Condition Assessment, and Reserve for Replacement Rules and Guidelines. The rules pertaining to Reserve for Replacement Requirements are moved to 10 TAC Chapter 10, Subchapter E, concerning Post Award and Asset Management Requirements.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted between September 21, 2012 and October 22, 2012. Comments regarding the new sections were accepted at public hearings and in writing and by facsimile. Written comments were received from (1) R. L. "Bobby" Bowling IV, Tropicana Building Corporation.

§10.302(i)(6)(B)(i) and (iii) Exceptions to Feasibility Conclusions. (1)

COMMENT: Commenter stated that feasibility exemptions for developments receiving Project-based Section 8 Rental Assistance for at least 50% of the units or developments characterized as public housing as defined by HUD for at least 50% of the units should be removed. Commenter believes the exemptions hold private developers to stricter standards than public housing authorities and all developers should have to follow the same underwriting rules. The commenter further states that in this economic and fiscal climate, the Federal Government is likely to lessen support of or eliminate entirely both the Section 8 program and the public housing program, leaving TDHCA to deal with infeasible projects over the long-term if this rule is not changed. Commenter further states that TDHCA's assumption that the Federal Government will continue to support one of these types of deals, if it becomes infeasible, is in error or at the very least bad public policy.

STAFF RESPONSE: The feasibility exemptions for developments receiving Project-based Section 8 Rental Assistance for at least 50% of the units or developments characterized as public housing as defined by HUD for at least 50% of the units are necessary due to the unique characteristics of these types of developments. The rental assistance and/or operating subsidies from HUD under these programs is determined by HUD in an amount to cover operating expenses and debt service that is not otherwise paid for with non-subsidized rental income. As such, the expense to income ratio threshold cannot be achieved. Additionally, the long-term debt coverage ratio (based on projecting expense increases greater than rent increases per REA rule) typically falls below the long-term debt coverage ratio floor of 1.15:1 times. Without these exemptions, these types of developments would generally not be deemed financially feasible under REA rules and therefore not recommended for approval under any of TDHCA's programs.

These exemptions stem from the mathematical realities for underwriting these types of developments based on HUD's program design and assistance methodology. The underwriting exceptions are not targeted to provide any developer an unfair advantage in the programs. Any policy decisions to be made to encourage or discourage such developments would be more appropriately addressed by the scoring or eligibility criteria in the Qualified Allocation Plan or general multifamily rules. Therefore, staff recommended no change based on this comment.

BOARD RESPONSE: Accepted staff's recommendation

The Board approved the final order adopting the new sections on November 13, 2012.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206301

Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 27, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 475-3916

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SUBCHAPTER F. COMPLIANCE MONITORING

10 TAC §§10.601 - 10.625

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") adopts new 10 TAC Chapter 10, Subchapter F, §§10.601 - 10.625, concerning Compliance Monitoring. Sections 10.609, 10.618 and 10.621 are adopted with changes to the proposed text as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7394). Sections 10.601 - 10.608, 10.610 - 10.617, 10.619, 10.620 and 10.622 - 10.625 are adopted without changes and will not be republished.

REASONED JUSTIFICATION. As part of the overhaul and reorganization of the Department's Multifamily rules, staff recommended the creation of new 10 TAC Chapter 10, concerning Uniform Multifamily Rules that bring together standardized definitions, and the pre and post award programmatic activities into one chapter. The adoption of new 10 TAC Chapter 10, Subchapter F will provide guidance on complying with multifamily Department programs.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. Comments were accepted between September 21, 2012 and October 22, 2012, with comments received from (1) Scott Marks of Coats Rose.

Figure: 10 TAC §10.621(j).

COMMENT SUMMARY: Commenter suggested that the score for the violation "Pattern of minor property condition violations" be changed from 10 points uncorrected and 5 points corrected to 5 points uncorrected and 3 points corrected.

STAFF RESPONSE: Staff agreed and recommended that the score for the violation "Pattern of minor property condition violations" be changed from 10 points uncorrected and 5 points corrected to 5 points uncorrected and 3 points corrected as this score is more appropriate to address this violation.

COMMENT SUMMARY: Commenter suggested that the finding "out of compliance and never expected to comply" should not be a double penalty.

STAFF RESPONSE: Staff disagreed that the finding "out of compliance and never expected to comply" should be treated differently because proper completion of Form 8823 requires identification of all noncompliance. Staff recommended no changes as a result of this comment.

COMMENT SUMMARY: Commenter suggested that there should be a new violation "building failed to meet minimum set aside."

STAFF RESPONSE: Staff disagreed that there should be any changes to the minimum set aside findings because there are other provisions of the rule to address the situations where the identification of this finding may have a disproportionate impact

on an owner's ability to participate in TDHCA programs. Staff recommended no changes as a result of this comment.

Figure: 10 TAC §10.621(k).

COMMENT SUMMARY: Commenter suggested that there should be no score for the violation "Failure to complete Annual Eligibility Certification" if the owner completed an Income Certification form.

STAFF RESPONSE: Staff disagreed that there should be no score for the violation "Failure to complete Annual Eligibility Certification" if the owner completed an Income Certification because owners should be completing the correct, required forms, and not be completing Income Certifications if they are not required. Staff recommended no changes as a result of this comment.

§10.625. Temporary Suspension of Other Sections of this Subchapter.

COMMENT SUMMARY: Commenter suggested that the executive director may want to grant permanent suspensions to the compliance rules "...so an owner does not have to continue requesting temporary suspensions every time he or she applies to the department for assistance."

STAFF RESPONSE: Staff disagreed with Commenter because this issue is addressed in §1.5(n) of this title (relating to Previous Participation Reviews).

The Board approved staff recommendations and the final order adopting new sections, including non-substantive technical corrections, on November 13, 2012.

STATUTORY AUTHORITY. The new sections are adopted pursuant to the authority of Texas Government Code, §2306.053, which authorizes the Department to adopt rules; and Texas Government Code, §§2306.041 - 2306.042 which authorize the Department to adopt a standardized penalty schedule.

§10.609. Annual Recertification for All Programs and Student Requirements for HTC, Exchange, TCAP, and BOND Developments.

(a) Recertification Requirements for 100 percent low income HTC, Exchange and TCAP Developments:

(1) Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTC Developments perform annual income recertifications. Households will maintain the designation they had at initial certification;

(2) To comply with HUD reporting requirements, once every calendar year, the Development must collect a self certification from each household that reports the number of household members, age, ethnicity, race, disability status, rental amounts and rental assistance (if any). In addition, the self certification will collect information about student status to establish ongoing compliance with the HTC program. The Development must collect this self certification information on the Department's Annual Eligibility Certification (AEC) form and must maintain the certification in all household files; and

(3) One-Hundred percent low income HTC Developments that are not required to complete annual income recertifications but voluntarily continue to do so must obtain the AEC form described in paragraph (2) of this subsection and maintain it in all household files. The Department will not review recertification documentation during a monitoring review unless noncompliance is identified with the initial certification. Failure to complete the AEC form will result in a noncompliance finding under, "Failure to maintain or provide Annual Eligibility Certification" and scored in the Department's Compliance Status System as applicable.

(b) Recertification Requirement for Mixed Income HTC, Exchange and TCAP Developments. HTC projects (as defined on Part II question, 8b of IRS Form 8609) with Market Units must complete annual income recertifications. Section 10.610 of this chapter (relating to Managing Additional Income and Rent Restrictions for HTC, Exchange and TCAP Developments) sets out the requirements for maintaining compliance with the Available Unit Rule.

(c) Student Requirements for HTC, Exchange and TCAP Developments. Changes to student status reported by the household at anytime during their occupancy or on the AEC require the Owner to determine if the household continues to be eligible under the HTC program. During the Compliance Period, if the household is comprised of full-time students, the household must qualify for a HTC program exception, and supporting documentation must be maintained in the household's file. The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. During the Compliance Period, noncompliance with this section will result in the issuance of IRS Form 8823 reporting noncompliance under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable. Regardless of the requirements stated in a LURA, after the Compliance Period, the Department will not monitor to determine if households meet the student requirements of the Housing Tax Credit program.

(d) Recertification Requirements for 100 percent low income BOND Developments. If 100 percent of the Units are set-aside for households at 60 percent or 50 percent of Area Median Income, regardless of the requirements in the LURA, recertifications are not required.

(e) Recertification Requirement for mixed income BOND Developments. If less than 100 percent of the Units are set-aside for households at 60 percent or 50 percent Area Median Income, Low Income households must be recertified to establish compliance with the Available Unit Rule. Regardless of the requirements stated in the LURA, Eligible Tenants (as defined in the Development's LURA) do not need to be annually recertified.

(f) Student Requirements for 100 percent low income BOND Developments. One-hundred percent low income Bond Developments must continue to annually screen households for student status. Bond Developments that do not also have Housing Tax Credits must use the Department's Certification of Student Eligibility form and it must be maintained in the household's file. Bond developments layered with HTCs may use the Annual Eligibility Certification to annually screen for student status. Changes to student status that the household reports at anytime during their occupancy or during annual screening for student status, require the Owner to determine if the household continues to be eligible under the Bond program. If the household is comprised of full-time students then the household must meet a program exception, which must be documented and maintained in the household's file.

(g) Student requirements for mixed income BOND Developments. Mixed Income Bond Developments must annually screen low income households for student status during the recertification process. If the household is not an eligible student household, it may be possible to re-designate the full-time student household to an Eligible Tenant (ET). The Development must have a statement in a lease addendum (or in their lease contract) that requires households to report changes in their student status. Noncompliance with this section will result in a noncompliance finding under, "Low-income Units occupied by nonqualified full-time students" and scored in the Department's Compliance Status System as applicable.

(h) Recertification Requirements for HOME Developments:

(1) For HOME Investment Partnership Developments, in accordance with 24 CFR §92.203 and §92.252 of the HOME Final Rule, regardless of the requirements stated in a LURA, recertification requirements will be monitored as shown in paragraph (2)(A) - (F) of this subsection;

(2) HOME Developments must complete a recertification with verifications of each HOME assisted Unit every sixth year of the Development's affordability period. The recertification is due on the anniversary of the household's move-in date. For purposes of this section the beginning of a HOME Development affordability period is the effective date on the first page of the HOME LURA. For example, a HOME Development with a LURA effective date of May 2001 will have the sixth year of the affordability period determined in *Example 609(1):*

(A) Year 1: May 15, 2001 - May 14, 2002;

(B) Year 2: May 15, 2002 - May 14, 2003;

(C) Year 3: May 15, 2003 - May 14, 2004;

(D) Year 4: May 15, 2004 - May 14, 2005;

(E) Year 5: May 15, 2005 - May 14, 2006;

(F) Year 6: May 15, 2006 - May 14, 2007;

(G) Year 7: May 15 2007 - May 14, 2008;

(H) Year 8: May 15, 2008 - May 14, 2009;

(I) Year 9: May 15 2009 - May 14, 2010;

(J) Year 10: May 15 2010 - May 14, 2011;

(K) Year 11: May 15 2011 - May 14, 2012; and

(L) Year 12: May 15 2012 - May 14, 2013.

(3) In the scenario in paragraph (2) of this subsection, all households in HOME Units must be recertified with source documentation between May 15, 2006 to May 14, 2007 and between May 15, 2012 and May 14, 2013. In the intervening years the Development must collect a self certification by the effective date of the original Income Certification from each household that is assisted with HOME funds, *Example 609(1):* a household moved into a HOME unit on June 10, 2010, the household's self certification must be completed by June 10, 2011, and the household must be recertified with source documentation effective June 10, 2012. The Development must use the Department's Income Certification form, unless the property also participates in the Rural Development or a project Based HUD program, in which case, the other program's income certification form will be accepted. Noncompliance with this section will result in a noncompliance finding of, "Owner failed to maintain or provide tenant annual income recertification" and scored in the Department's Compliance Status System as applicable. If the household reports on their self certification that their household income is above the current 80 percent applicable income limit or there is evidence that the household's written statement failed to completely and accurately provide information about the household's characteristics and/or income, then a recertification with verifications is required.

(i) Recertification Requirements for One-Hundred Percent HTF Developments. Regardless of the requirements stated in a LURA, the Department will not monitor to determine if 100 percent low income HTF Developments performed annual income recertifications. The household will maintain its initial low-income designation at move-in and throughout the household's occupancy, i.e., Extremely Low Income (ELI), Very Low Income (VLI) and Low Income (LI), provided that the Owner does not charge gross rent in excess of the applicable rent limit.

(j) Recertification Requirements for HTF Developments with Market Units. HTF Developments with Market Units in one or more buildings (as evidenced in their LURA) must perform annual income recertifications of all households residing in HTF Program Units. The HTF program requires Developments to comply with the Available Unit Rule. If a household's income exceeds 140 percent of the recertification limit (highest income tier), the household must be redesignated as over income (OI) and the Next Available Unit on the Development must be leased to a household with an income and rent less than the EVI, VLI, and LI limit depending on what designation the Development needs to maintain compliance with the LURA. The OI household may be redesignated in accordance with lease terms as Market once the OI Unit is replaced with another low-income Unit.

(k) Recertification Requirements for HTF Developments with Market units and other Department administered multifamily rental programs. HTF Developments with other Department administered programs will comply with the requirements of the other program. *Example 609(2):* If a Development is a mixed income HTF and 100 percent low income HTC, all households must be certified at move in. Then, once a calendar year, in accordance with the HTC requirements, the AEC must be obtained. It is not necessary to complete a full income recertification of the households designated under the HTC program.

(l) Recertification Requirements for NSP Developments. NSP Developments are not required to perform annual recertifications unless the LURA specifically requires recertifications.

(m) If a Development is required to perform an annual income recertification of a low-income household for a TDHCA program, the AEC is not also required. *Example 609(3):* If a Development has TDHCA HOME funds and Housing Tax Credits, the owner must obtain an Income Certification form from each household designated under the HOME program. Since the property is required to obtain the Income Certification form, the AEC is not required. *Example 609(4):* A mixed income Development was awarded Housing Tax Credits in 1990 and in 2011. Since the 2011 allocation requires all low-income households to be recertified, §10.620(b)(12) of this chapter (relating to Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period) does not apply.

§10.618. Special Rules Regarding Rents and Rent Limit Violations.

(a) Rent or Utility Allowance Violations of the maximum allowable limit (HTC). Under the HTC program, the amount of rent paid by the household plus an allowance for utilities, plus any mandatory fees, cannot exceed the maximum applicable limit (as determined by the minimum set-aside elected by the Owner) published by the Department. If it is determined that a HTC Development, during the Compliance Period, collected rent in excess of the rent limit established by the minimum set-aside, the owner must correct the violation by reducing the rent charged. The Department will report the violation as corrected on January 1st of the year following the violation. The refunding of overcharged rent does not avoid the disallowance of the credit by the IRS.

(b) Rent or Utility Allowance Violations of additional rent restrictions (HTC). If the Owner agreed to lease Units at rents less than the maximum allowed under the Code (additional occupancy restrictions), the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged. This applies during the entire Affordability Period. The noncompliance event will be considered corrected on the date which is the later of the date the overcharged rent was refunded/credited to the resident or the date that the rent plus the utility allowance is equal to or less than the applicable

limit. *Example 618(1):* For Code §42 purposes, the maximum allowable limit is 60 percent. However, the Owner agreed to lease some Units to households at the 30 percent income and rent limits. It was discovered that the 30 percent households were overcharged rent. The Owner will be required to reduce the current amount of rent charged and refund the excess rents to the households.

(c) Rent Violations of the maximum allowable limit due to application fees (HTC). Under the HTC program, Owners may not charge tenants any overhead costs as part of the application fee. Owners must only charge the actual cost for application fees as supported by invoices from the screening company the Owner uses. The amount of time Development staff spends on checking an applicant's income, credit history, and landlord references may be included in the Development's application fee. Development Owners may add $5.50 per Unit for their other out of pocket costs for processing an application without providing documentation. *Example 618(2):* A Development's out of pocket cost for processing an application is $17.00 per adult. The property may charge $22.50 for the first adult and $17.00 for each additional adult. Should an Owner desire to include a higher amount to cover staff time, prior approval is required and wage information and a time study must be supplied to the Department. Documentation of Development costs for application processing or screening fees must be made available during onsite visits or upon request. The Department will review application fee documentation during onsite monitoring visits. If the Department determines from a review of the documentation that the Owner has overcharged residents an application fee, the noncompliance will be reported to the IRS on Forms 8823 under the category Gross rent(s) exceeds tax credit limits. The noncompliance will be corrected on January 1st of the next year. Owners are not required to refund the overcharged fee amount. If the Development refunds the overcharged fee in full or in part, the units will remain out of compliance until January 1st of the next year.

(d) Rent or Utility Allowance Violations on Non-HTC Developments and foreclosed HTC properties for three years after foreclosure. If it is determined that the Development collected rent in excess of the allowable limit, the Department will require the Owner to refund to the affected residents the amount of rent that was overcharged.

(e) Trust Account to be established. If the Owner is required to refund rent under subsection (b) or (d) of this section and cannot locate the resident, the excess rent collected must be deposited into a trust account for the tenant. The account must remain open for the shorter of a four (4) year period, or until all funds are claimed. If funds are not claimed after the four year period, the unclaimed funds must be remitted to the Texas Comptroller of Public Accounts Unclaimed Property Holder Reporting Section to be dispersed as required by Texas unclaimed property statutes.

(f) Rent Adjustments for HOME Developments:

(1) 100 percent HOME assisted Developments. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to 30 percent of the household's adjusted income;

(2) HOME Developments with any Market Rate units. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the comparable Market rent; and

(3) HOME Developments layered with other Department affordable housing programs. If a household's income exceeds 80 percent at recertification, the owner must charge rent equal to the lesser of 30 percent of the household's adjusted income or the rent allowable under the other program.

(g) Special conditions for NSP Developments. To determine if a Unit is rent restricted, the amount of rent paid by the household, plus an allowance for utilities, plus any rental assistance payment must be less than the applicable limit.

(h) Employee Occupied Units (HTC Developments). Revenue Rulings 92-61 and 2004-82 provide guidance on employee occupied units. Provided that all the criteria in the Rulings are met, if the owner of the Development does not charge the employee for rent, the unit will be removed from the numerator and denominator of the applicable fraction to determine compliance. If the owner charges the employee any amount of rent, the Department will evaluate the eligibility of the household. If the household's income exceeds the maximum allowable limit or there is any other noncompliance, the event will be cited, scored and reported to the IRS on Form 8823 as appropriate.

§10.621. Material Noncompliance Methodology.

(a) The Department maintains a compliance history of each monitored Development in the Department's Compliance Status System. Developments with more than one program administered by the Department are scored by program. The Development will be considered in Material Noncompliance if the score for any single program exceeds the Material Noncompliance threshold for that program.

(b) A Development will not be assigned the scores noted in this section until after the Owner has been provided a written notice of the noncompliance and provided a corrective action deadline to show that either the Development was never in noncompliance or that the noncompliance event has been corrected.

(c) This section identifies all possible noncompliance events for all programs monitored by the Physical Inspection and Compliance Monitoring Sections of the Compliance Division. However, not all issues listed in this section pertain to all Developments. In addition, only certain noncompliance events are reportable on Form 8823. Those events that are reportable under the HTC program on Form 8823 are so indicated in subsections (h) and (i) of this section.

(d) For HTC Developments, all Forms 8823 issued by the Department will be entered into the Department's Compliance Status System. However, Forms 8823 issued prior to January 1, 1998 will not be considered in determining Material Noncompliance.

(e) For all programs, a Development will be in Material Noncompliance if the noncompliance event is stated in this section to be Material Noncompliance. The Department may take into consideration the representations of the Owner regarding monitoring notices and Owner responses; however, unless an Owner can prove otherwise, the compliance records of the Department shall be presumed to be correct.

(f) All Developments, regardless of status, that are or have been administered, funded, or monitored by the Department, are scored even if the Development no longer actively participates in the program, with the exception of properties in the CDBG disaster recovery and Federal Deposit Insurance Corporation's (FDIC) Affordable Housing Disposition Program.

(g) Noncompliance events are categorized as either "Development events" or "Unit/building events." Development events of noncompliance affect some or all the buildings in the Development; however, the Development will receive only one score for the noncompliance event rather than a score for each Unit or building. Other noncompliance events are identified individually by Unit and will receive the appropriate score for each Unit cited with an event. The Unit scores and the Development scores accumulate towards the total score of the Development. Violations under the HTC program are identified by Unit; however, the building is scored rather than the Unit and the building

will receive the noncompliance score if one or more of the Units in that building are in noncompliance.

(h) Uncorrected noncompliance events, if applicable to the Development, will carry the maximum number of points until the noncompliance event has been reported corrected by the Department. Once reported corrected by the Department, the score will be reduced to the "corrected value." Corrected noncompliance will no longer be included in the Development score three (3) years after the date the noncompliance was reported corrected by the Department.

(i) Each noncompliance event is assigned a point value. The possible events of noncompliance and associated "corrected" and "uncorrected" points are listed in subsections (j) and (k) of this section.

(j) Figure: 10 TAC §10.621(j) lists events of noncompliance that affect the entire Development rather than an individual Unit. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC and Exchange Developments is 30 points. The Material Noncompliance threshold for a non-HTC Development with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC Developments with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after correction. The fourth column indicates which programs the noncompliance event applies. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.
Figure: 10 TAC §10.621(j)

(k) Figure: 10 TAC §10.621(k) lists ten events of noncompliance associated with individual Units. The first column of the chart identifies the noncompliance event. The second column identifies the number of points assigned this event while the issue is uncorrected. The Material Noncompliance threshold for a HTC or Exchange Development is 30 points. The Material Noncompliance threshold for a non-HTC property with 1-50 Low Income Units is 30 points. The Material Noncompliance threshold for a non-HTC Development with 51-200 Low Income Units is 50 points. The Material Noncompliance threshold for non-HTC properties with 201 or more Low Income Units is 80 points. The third column lists the number of points assigned to the event from the date the issue is corrected until three (3) years after the event is corrected. The fourth column indicates what programs the noncompliance event applies to. The last column indicates if the issue is reportable on Form 8823 for HTC Developments.
Figure: 10 TAC §10.621(k)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206299
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 27, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 475-3916

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CHAPTER 60. COMPLIANCE ADMINISTRATION

SUBCHAPTER A. COMPLIANCE MONITORING

10 TAC §§60.101 - 60.130

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 60, Subchapter A, §§60.101 - 60.130, concerning Compliance Monitoring, without changes to the proposal as published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7434) and will not be republished.

REASONED JUSTIFICATION. The Department has reorganized its rules and the majority of the content in 10 TAC Chapter 60, Subchapter A has been moved to 10 TAC Chapter 10, Subchapter F, concerning Compliance Monitoring. Therefore, it is necessary that the Department adopts the repeal of 10 TAC §§60.101 - 60.130.

The Department accepted public comments between September 21, 2012 and October 22, 2012. Comments regarding the repeal were accepted in writing and by fax. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on November 13, 2012.

STATUTORY AUTHORITY. The repeal is adopted pursuant to the authority of Texas Government Code, §2306.053 which authorizes the Department to adopt rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206298
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Effective date: December 27, 2012
Proposal publication date: September 21, 2012
For further information, please call: (512) 475-3916

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PART 6. TEXAS DEPARTMENT OF RURAL AFFAIRS

CHAPTER 256. ADMINISTRATION

The Texas Department of Agriculture (department) adopts the repeal of 10 TAC Chapter 256, Subchapter A, §§256.1 - 256.15, concerning the management policies of the Texas Department of Rural Affairs (TDRA), board of directors and executive director, and Subchapter B, §§256.100, 256.200, 256.300, 256.400, 256.500, and 256.600, concerning TDRA general policies and procedures, without changes to the proposal as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8408). Chapter 256 is repealed because the sections in that chapter are no longer needed. Senate Bill 1, 82nd Legislature, First Called Special Legislative Session, 2011 (Senate Bill 1),

effective September 1, 2011, abolished TDRA and transferred its respective powers, duties, functions, programs, and activities to the department. The board of directors was also abolished by Senate Bill 1, eliminating the need for Subchapters A and B. While TDRA programs were transferred to TDA and its Office of Rural Affairs, and are administered by that Office within TDA, the general policies and procedures included in Subchapter B are unnecessary, because those are covered in similar policies and procedures of the department.

No comments were received on the proposal.

SUBCHAPTER A. MANAGEMENT POLICIES OF BOARD AND EXECUTIVE DIRECTOR

10 TAC §§256.1 - 256.15

The repeal is adopted under the Texas Government Code, §487.351, as amended by Senate Bill 1, 82nd Legislature, First Called Special Legislative Session, 2011, which provides the department with the authority to administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et seq.), and to allocate such funds to eligible counties and municipalities under department rules; and Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206259
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Texas Department of Rural Affairs
Effective date: December 25, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 463-4075

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SUBCHAPTER B. GENERAL POLICIES AND PROCEDURES

10 TAC §§256.100, 256.200, 256.300, 256.400, 256.500, 256.600

The repeal is adopted under the Texas Government Code, §487.351, as amended by Senate Bill 1, 82nd Legislature, First Called Special Legislative Session, 2011, which provides the department with the authority to administer the state's allocation of federal funds provided under the community development block grant nonentitlement program authorized by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §5301 et seq.), and to allocate such funds to eligible counties and municipalities under department rules; and Texas Agriculture Code, §12.016, which provides the department with the authority to adopt rules to administer its duties under the Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Proposal publication date: October 26, 2012
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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 9. LP-GAS SAFETY RULES

The Railroad Commission of Texas adopts amendments to Chapter 9, Subchapter A, to §§9.2 - 9.4, 9.6, 9.7, 9.10, 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.36 - 9.38, 9.41, 9.51, and 9.54, relating to Definitions; LP-Gas Report Forms; Records and Enforcement; Licenses and Fees; Application for License and License Renewal Requirements; Rules Examination; General Installers and Repairman Exemption; Hearings for Denial, Suspension, or Revocation of Licenses or Certificates; Designation and Responsibilities of Company Representatives and Operations Supervisors; Reciprocal Examination Agreements with Other States; Franchise Tax Certification and Assumed Name Certificates; Changes in Ownership, Form of Dealership, or Name of Dealership; Insurance and Self-Insurance Requirements; Application for an Exception to a Safety Rule; Reasonable Safety Provisions; Report of LP-Gas Incident/Accident; Termination of LP-Gas Service; Reporting Unsafe LP-Gas Activities; Testing of LP-Gas Systems in School Facilities; General Requirements for Training and Continuing Education; and Commission-Approved Outside Instructors; Subchapter B, §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113 - 9.115, 9.126, 9.129, 9.130, 9.134, 9.140, 9.141, and 9.143, relating to Filings Required for Stationary LP-Gas Installations; Notice of Stationary LP-Gas Installations; Objections to Proposed Stationary LP-Gas Installations; Hearings on Stationary LP-Gas Installations; Physical Inspection of Stationary LP-Gas Installations; Emergency Use of Proposed Stationary LP-Gas Installations; Maintenance; Odorizing and Reports; Examination and Testing of Containers; Appurtenances and Equipment; Manufacturer's Nameplate and Markings on ASME Containers; Commission Identification Nameplates; Connecting Container to Piping; Uniform Protection Standards; Uniform Safety Requirements; and Bulkhead, Internal Valve, API 607 Ball Valve, and ESV Protection for Stationary LP-Gas Installations with Individual or Aggregate Water Capacities of 4,001 Gallons or More; Subchapter C, §§9.201 - 9.204, 9.208, and 9.211, relating to Applicability; Registration and Transfer of LP-Gas Transports or Container Delivery Units; School Bus, Public Transportation, Mass Transit, and Special Transit Vehicle Installations and Inspections; Maintenance of Vehicles; Testing Requirements; and Markings; and Subchapter D, §9.312, relating to Certification Requirements for Joining Methods.

Section 9.2 is adopted with one correction and the remaining sections are adopted without changes to the proposed text as

published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7595).

The Commission adopts the amendments to update references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED) and to consolidate all of the division's administrative forms in a single table for convenient reference. The Commission eliminates the requirement in §9.114(d) that odorizers file LPG Form 17, Odorization Report, quarterly. LPG Form 17 is no longer needed, because it substantially duplicates information available on AFRED Form 1, Odorizer's or Importer's Report of Fees Collected.

The Commission adopts one change in the definition of "noncorrosive" in §9.2(34) to correct the name of ASTM International.

The Commission simultaneously readopts the rules in Chapter 9 in accordance with Texas Government Code, §2001.039. The notice of adopted rule review is filed with the Texas Register concurrently with this adoption.

The Commission received no comments on the proposed amendments or four-year review.

SUBCHAPTER A. GENERAL REQUIREMENTS

16 TAC §§9.2 - 9.4, 9.6, 9.7, 9.10, 9.13, 9.16 - 9.18, 9.21, 9.22, 9.26 - 9.28, 9.36 - 9.38, 9.41, 9.51, 9.54

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, §113.051.

Issued in Austin, Texas, on December 4, 2012.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advanced field training (AFT)--The final portion of the training or continuing education requirements in which an individual shall successfully perform the specified LP-gas activities in order to demonstrate proficiency in those activities.

(2) AED--The Commission's Alternative Energy Division.

(3) AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including LP-gas certification, exempt registration, training, and continuing education programs.

(4) AFT materials--The portion of a Commission training module consisting of the four sections of the Railroad Commission's LP-Gas Qualifying Field Activities, including General Instructions, the Task Information, the Operator Qualification Checklist, and the Railroad Commission/Employer Record.

(5) Aggregate water capacity (AWC)--The sum of all individual container capacities measured by weight or volume of water which are placed at a single installation location.

(6) Applicant--An individual:

(A) who is applying for a new certificate; or

(B) whose certification has lapsed for a period of less than two years and who is applying to restore certification by paying any applicable fees and by completing any applicable training or continuing education requirements.

(7) Bobtail driver--An individual who operates an LP-gas cargo tank motor vehicle of 5,000 gallons water capacity or less in metered delivery service.

(8) Breakaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a breakaway device.

(9) Categories of LPG activities--The LP-gas license categories as specified in §9.6 of this title (relating to Licenses and Fees).

(10) Certificate holder--An individual:

(A) who has passed the required management-level qualification examination, satisfactorily completed any applicable training or continuing education requirements as specified in §9.52 of this title (relating to Training and Continuing Education Courses), and paid the applicable fee;

(B) who has passed the required employee-level qualification examination, paid the applicable fees, and complied with the training or continuing education requirements in §9.52 of this title;

(C) who has passed the required employee-level qualification examination, has paid the applicable fee, and is required to comply with a training requirement as specified in §9.52 of this title;

(D) who holds a current reciprocal examination exemption pursuant to §9.18 of this title (relating to Reciprocal Examination Agreements with Other States); or

(E) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption).

(11) Certified--Authorized to perform LP-gas work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

(12) CETP--The Certified Employee Training Program offered by the Propane Education and Research Council (PERC), the National Propane Gas Association (NPGA), or their authorized agents or successors.

(13) Commercial installation--An LP-gas installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, private motor/mobile fuel cylinder filling operation, a microwave tower, or a public or private agricultural installation.

(14) Commission--The Railroad Commission of Texas.

(15) Company representative--The individual designated to the Commission by a license applicant or a licensee as the principal individual in authority and, in the case of a licensee other than a

Category P licensee, actively supervising the conduct of the licensee's LP-gas activities.

(16) Container delivery unit--A vehicle used by an operator principally for transporting LP-gas in cylinders.

(17) Continuing education--Courses required to be successfully completed at least every four years by certain certificate holders.

(18) Director--The director of the AED or the director's delegate.

(19) DOT--The United States Department of Transportation.

(20) Employee--An individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, on a full-time or permanent basis, or, for purposes of this chapter, an owner-employee.

(21) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LP-gas installation.

(22) Leak grades--An LP-gas leak that is:

(A) a Grade 1 leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous; or

(B) a Grade 2 leak that is recognized as being nonhazardous at the time of detection, but requires a scheduled repair based on a probable future hazard.

(23) Licensed--Authorized to perform LP-gas activities through the issuance of a valid license.

(24) Licensee--A person which has applied for and been granted an LP-gas license by the Commission, or who holds a master or journeyman plumber license from the Texas State Board of Plumbing Examiners or a Class A or B Air Conditioning and Refrigeration Contractors License from the Texas Department of Licensing and Regulation and has properly registered with the Commission.

(25) LP-Gas Operations--The organizational unit of the AED that administers the LP-gas safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(26) LP-Gas Safety Rules--The rules adopted by the Railroad Commission in the Texas Administrative Code, Title 16, Part 1, Chapter 9, including any NFPA or other documents adopted by reference. The official text of the Commission's rules is that which is on file with the Secretary of State's office and available at www.sos.state.tx.us or through the Commission's web site at www.rrc.state.tx.us.

(27) LP-gas system--All piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LP-gas.

(28) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, used primarily in the conveyance of the general public.

(29) Mobile fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(30) Mobile fuel system--An LP-gas system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(31) Motor fuel container--An LP-gas container mounted on a vehicle to store LP-gas as the fuel supply to an engine used to propel the vehicle.

(32) Motor fuel system--An LP-gas system, excluding the container, which supplies LP-gas to an engine used to propel the vehicle.

(33) MPS gas (Methylacetylene-propadiene, stabilized)--A mixture of gases in the liquid phase and as defined in Texas Natural Resources Code, Chapter 113, §113.002(4).

(34) Noncorrosive--Corrosiveness of gas which does not exceed the limitation for Classification 1 of ASTM International (ASTM) Copper Strip Classifications when tested in accordance with ASTM D 1834-64, "Copper Strip Corrosion of Liquefied Petroleum (LP) Gases."

(35) Nonspecification unit--An LP-gas transport not constructed to DOT MC-330 or MC-331 specifications but which complies with the exemption in 49 Code of Federal Regulations §173.315(k). (See also "Specification unit" in this section.)

(36) Operations supervisor--The individual who is certified by the Commission to actively supervise a licensee's LP-gas operations and is authorized by the licensee to implement operational changes.

(37) Outlet--A site operated by an LP-gas licensee from which any regulated LP-gas activity is performed.

(38) Outside instructor--An individual, other than a Commission employee, approved by AFRED to teach certain LP-gas training or continuing education courses.

(39) Person--An individual, partnership, firm, corporation, joint venture, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee, including the definition of "person" as defined in the applicable sections of 49 CFR relating to cargo tank hazardous material regulations.

(40) Portable cylinder--A receptacle constructed to DOT specifications, designed to be moved readily, and used for the storage of LP-gas for connection to an appliance or an LP-gas system. The term does not include a cylinder designed for use on a forklift or similar equipment.

(41) Property line--The boundary which designates the point at which one real property interest ends and another begins.

(42) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy vehicles.

(43) Recreational vehicle--A vehicular-type unit primarily designed as temporary living quarters for recreational, camping, travel, or seasonal use that either has its own motive power or is mounted on, or towed by, another vehicle.

(44) Register (or registration)--The procedure to inform the Commission of the use of an LP-gas transport or container delivery unit in Texas.

(45) Repair to container--The correction of damage or deterioration to an LP-gas container, the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(46) Rules examination--The Commission's written examination that measures an examinee's working knowledge of Chapter 113 of the Texas Natural Resources Code and/or the current LP-Gas Safety Rules.

(47) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(48) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(49) Self-service dispenser--A listed device or approved equipment in a structured cabinet for dispensing and metering LP-gas between containers that must be accessed by means of a locking device such as a key, card, code, or electronic lock, and which is operated by a certified employee of an LP-gas licensee or an ultimate consumer trained by an LP-gas licensee.

(50) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(51) Specification unit--An LP-gas transport constructed to DOT MC-330 or MC-331 specifications. (See also "Nonspecification unit" in this section.)

(52) Subframing--The attachment of supporting structural members to the pads of a container, excluding welding directly to or on the container.

(53) Trainee--An individual who has not yet taken and passed an employee-level rules examination.

(54) Training--Courses required to be successfully completed as part of an individual's requirements to obtain or maintain certain certificates.

(55) Transfer--The procedure to inform LP-Gas Operations of a change in operator of an LP-gas transport or container delivery unit already registered with LP-Gas Operations.

(56) Transfer system--All piping, fittings, valves, pumps, compressors, meters, hoses, bulkheads, and equipment utilized in dispensing LP-gas between containers.

(57) Transport--Any bobtail or semitrailer equipped with one or more containers.

(58) Transport driver--An individual who operates an LP-gas trailer or semi-trailer equipped with a container of more than 5,000 gallons water capacity.

(59) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(60) Ultimate consumer--The person controlling LP-gas immediately prior to its ignition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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SUBCHAPTER B. LP-GAS INSTALLATIONS, CONTAINERS, APPURTENANCES, AND EQUIPMENT REQUIREMENTS

16 TAC §§9.101 - 9.103, 9.107, 9.109, 9.110, 9.113 - 9.115, 9.126, 9.129, 9.130, 9.134, 9.140, 9.141, 9.143

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, §113.051.

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SUBCHAPTER C. VEHICLES AND VEHICLE DISPENSERS

16 TAC §§9.201 - 9.204, 9.208, 9.211

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, §113.051.

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For further information, please call: (512) 475-1295

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SUBCHAPTER D. ADOPTION BY REFERENCE OF NFPA 54 (NATIONAL FUEL GAS CODE)

16 TAC §9.312

The Commission adopts the amendments under Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Natural Resources Code, §113.051.

Issued in Austin, Texas, on December 4, 2012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas (Commission) adopts amendments to Chapter 13, Subchapter A, §13.3 and §13.4, relating to Definitions; and CNG Forms; Subchapter B, §§13.24, 13.25, 13.35, 13.36, and 13.38, relating to Filings Required for School Bus, Mass Transit, and Special Transit Installations; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; and Removal from CNG Service; Subchapter C, §§13.61 - 13.65, 13.67 - 13.72, and 13.75, relating to Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualification as Self-Insured; Qualification by Irrevocable Letter of Credit; Statements in Lieu of Insurance Certificates; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Denial, Suspension, or Revocation of Licenses or Certifications and Hearings; Designation of Operations Supervisor (Branch Manager); Franchise Tax Certification and Assumed Name Certificate; Subchapter D, §13.93 and §13.94, relating to General; and Location of Installations; and Subchapter E, §13.141, relating to System Testing.

Section 13.3(6) and §13.72(b) are adopted with corrections, and the remaining sections are adopted without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7611).

The Commission adopts the amendments to update references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED). Other amendments delete references to some forms that are no longer used or update the titles of other forms.

The Commission adopts one correction in the definition of "ASTM" in §13.3(6) to correctly define the acronym as ASTM International (formerly American Society for Testing and Materials); and one correction in §13.72(b) to indicate that the examination is administered by AFRED, not LP-Gas Operations.

The Commission simultaneously readopts the rules in Chapter 13 in accordance with Texas Government Code, §2001.039. The notice of adopted rule review is filed with the Texas Register concurrently with this adoption.

The Commission received no comments on the proposed amendments or four-year review.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §13.3, §13.4

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas, on December 4, 2012.

§13.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) AED--The Commission's Alternative Energy Division.

(2) AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education program, including CNG certification, exempt registration, and training.

(3) ANSI--American National Standards Institute.

(4) ASME--American Society of Mechanical Engineers.

(5) ASME Code--ASME Boiler and Pressure Vessel Code.

(6) ASTM--ASTM International (formerly American Society for Testing and Materials).

(7) Automatic dispenser--A CNG dispenser which is operated by a member of the general public and which requires transaction authorization.

(8) Building--A structure with walls and a roof resulting in the structure being totally enclosed.

(9) Cascade storage system--Storage in multiple cylinders.

(10) CNG--See "Compressed natural gas" in this section.

(11) CNG cargo tank--A container which complies with ASME or DOT specifications used to transport CNG for delivery.

(12) CNG cylinder--A cylinder or other container designed for use or used as part of a CNG system.

(13) CNG system--A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or commercial installation, or used in conjunction with a motor vehicle or mobile fuel system fueled by CNG, or any system or facilities designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of CNG in portable CNG cylinders, not including natural gas facilities, equipment, or pipelines located upstream of the inlet of a compressor devoted entirely to CNG.

(14) Commercial installation--Any CNG installation located on premises other than a single family dwelling used as a residence, including but not limited to a retail business establishment, school, convalescent home, hospital, retail CNG cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

(15) Commission--The Railroad Commission of Texas.

(16) Company representative--An owner or employee of a licensee designated by that licensee to take any required examinations and to actively supervise CNG operations of the licensee.

(17) Compressed natural gas--Natural gas which is a mixture of hydrocarbon gases and vapors consisting principally of methane (CH_4) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

(18) Container--A pressure vessel cylinder or cylinders permanently manifolded together used to store CNG.

(19) Cylinder service valve--A hand-wheel operated valve connected directly to a CNG cylinder.

(20) Director--The director of the AED or the director's delegate.

(21) Dispensing area or dispensing installation--A CNG installation that dispenses CNG from any source by any means into fuel supply cylinders installed on vehicles or into portable cylinders.

(22) DOT--United States Department of Transportation.

(23) Flexible metal hose--Metal hose made from continuous tubing that is corrugated for flexibility and, if used for pressurized applications, has an external wire braid.

(24) Fuel supply cylinder--A cylinder mounted upon a vehicle for storage of CNG as fuel supply to an internal combustion engine.

(25) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of a CNG installation.

(26) Location--A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG activities, but where the activities of the site alone do not qualify the site as an outlet.

(27) LP-Gas Operations--The organizational unit of the AED that administers the CNG safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(28) Manifold--The assembly of piping and fittings used to connect cylinders.

(29) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county and primarily used in the conveyance of the general public.

(30) Metallic hose--Hose in which the strength of the hose depends primarily on the strength of metallic parts, including liners or covers.

(31) Mobile fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply for uses other than motor fuel.

(32) Mobile fuel system--A CNG system which supplies natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(33) Motor fuel container--A CNG container mounted on a vehicle to store CNG as the fuel supply to an engine used to propel the vehicle.

(34) Motor fuel system--A CNG system excluding the container which supplies CNG to an engine used to propel the vehicle.

(35) Motor vehicle--A self-propelled vehicle licensed for highway use or used on a public highway.

(36) Outlet--A site operated by a CNG licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license.

(37) Person--An individual, sole proprietor, partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

(38) Point of transfer--The point where the fueling connection is made.

(39) Pressure-filled--A method of transferring CNG into cylinders by using pressure differential.

(40) Pressure relief valve--A device designed to prevent rupture of a normally charged cylinder.

(41) Public transportation vehicle--A vehicle for hire to transport persons, including but not limited to taxis, buses (excluding school buses, mass transit, or special transit vehicles), or airport courtesy cars.

(42) Pullaway--The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pullaway device.

(43) Representative--The individual designated by an applicant or licensee as the principal individual in authority who is responsible for actively supervising the licensee's CNG activities.

(44) Residential fueling facility--An assembly and its associated equipment and piping at a residence used for the compression and delivery of natural gas into vehicles.

(45) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(46) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(47) Settled pressure--The pressure in a container at 70 degrees Fahrenheit, which cannot exceed the marked service or design pressure of the cylinder.

(48) Special transit vehicle--A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons.

(49) Transport--Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another, including but not limited to any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

(50) Ultimate consumer--The person controlling CNG immediately prior to its ignition.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Director, Pipeline Safety Division
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SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.24, 13.25, 13.35, 13.36, 13.38

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

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Mary Ross McDonald
Director, Pipeline Safety Division
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SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61 - 13.65, 13.67 - 13.72, 13.75

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas, on December 4, 2012.

§13.72. Designation of Operations Supervisor (Branch Manager).

(a) The commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the commission in determining the designation of an outlet includes, but is not limited to:

(1) distance from other CNG activities operated by the licensee;

(2) whether the operation is a duplicate of the home office operation; and

(3) whether the operation is directly supervised on a routine basis.

(b) A licensee maintaining more than one outlet shall file CNG Form 1001A with LP-Gas Operations designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination as administered by AFRED before commencing or continuing the licensee's operations at the outlet.

(c) An operations supervisor (branch manager) may be a company representative of the licensee; however, unless specific approval is granted by LP-Gas Operations, an individual may be designated as an operations supervisor (branch manager) at each outlet.

(d) The operations supervisor (branch manager) shall be directly responsible for actively supervising CNG operations of the licensee at the designated outlet.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
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SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

16 TAC §13.93, §13.94

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

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This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §13.141

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

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For further information, please call: (512) 475-1295

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SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §13.10

The Railroad Commission of Texas (Commission) adopts the repeal of §13.10, relating to CNG Advisory Committee, without changes to the proposal as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7623). The Commission adopts the repeal because, by the terms of the rule, the CNG advisory committee was abolished on August 31, 2006, and the rule is no longer necessary.

The Commission received no comments on the proposed repeal.

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

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For further information, please call: (512) 475-1295

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SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

16 TAC §13.185

The Railroad Commission of Texas (Commission) adopts amendments to §13.185, relating to Installation, without changes to the proposed text as published in the October 19, 2012, issue of the *Texas Register* (37 TexReg 8257). The Commission adopts the amendments to allow the option of residential fueling for CNG vehicles to take place inside a garage or building, with certain requirements specified in subsection (b).

The Commission received two comments on the proposed amendments. CenterPoint Energy supported the amendments and urged adoption of the amendments as proposed. The

Texas Independent Producers and Royalty Owners Association (TIPRO) also urged adoption of the amendments as proposed, and stated that, as natural gas production reaches unprecedented levels from shale plays across the country, many companies are converting commercial fleets to run on cheaper, cleaner CNG, while policy makers in government are seeking to remove unnecessary regulatory hurdles to increased individual use of CNG-powered vehicles. TIPRO commended the Commission on recognizing the need to update installation standards to reflect the safety of current home CNG refueling units and stated that the safety measures will ensure that residential CNG refueling remains safe without the unnecessary requirement for it to take place outdoors. The Commission agrees with both commenters.

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to compressed natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross reference to statute: Texas Natural Resources Code, Chapter 116, §116.012.

Issued in Austin, Texas, on December 4, 2012.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
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Proposal publication date: October 19, 2012
For further information, please call: (512) 475-1295

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas adopts amendments to Chapter 14, Subchapter A, §§14.2004, 14.2007, 14.2010, 14.2013, 14.2016, 14.2019, 14.2022, 14.2025, 14.2028, 14.2031, 14.2034, 14.2037, 14.2040, 14.2043, 14.2046, 14.2049, and 14.2052, relating to Applicability, Severability, and Retroactivity; Definitions; LNG Report Forms; Licenses and Related Fees; Licensing Requirements; Certification Requirements; Denial, Suspension, or Revocation of Licenses or Certifications, and Hearing Procedure; Designation of Outlet and Operations Supervisor (Branch Manager); Franchise Tax Certification and Assumed Name Certificates; Insurance Requirements; Self-Insurance Requirements; Components of LNG Stationary Installations Not Specifically Covered; Filings and Notice Requirements for Stationary LNG Installations; Temporary Installations; Filings Required for School Bus, Mass Transit, and Special Transit Vehicles; Report of LNG Incident/Accident; and Application for an Exception to a Safety Rule; Subchapter B, §§14.2101, 14.2104 and 14.2110, relating to Uniform Protection Requirements; Uniform Safety Requirements; and LNG Container Installation Distance Requirements; Subchapter D, §§14.2307, 14.2310, 14.2313, 14.2316, and 14.2319, relating to Indoor Fueling; Emergency Refueling; Fuel Dispensing Systems; Filings Required for Installation of Fuel Dispensers; and Automatic Fuel Dispenser Safety Requirements; Subchapter E, §14.2416 and §14.2437, relating to Installation of Valves; and Pressure and Relief Valves in Piping; Subchapter G, §14.2607 and §14.2640, relating to Vehicle Fuel Containers; and System Testing; and Subchapter H, §§14.2704, 14.2705, 14.2707, 14.2710, 14.2746, and 14.2749, relating to Registration and Transfer of LNG Transports; Decals or Letters of Authority and Fees; Testing Requirements; Markings; Delivery of Inspection Report to Licensee; and Issuance of LNG Form 2004 Decal.

Sections 14.2007(47) and 14.2025(b) are adopted with corrections and the remaining sections are adopted without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7624).

The Commission updates references to the former Alternative Fuels Research and Education Division (AFRED), the License and Permit Section of the Gas Services Division, and the Safety Division to clarify that these organizational units are now part of the Commission's Alternative Energy Division (AED). In other amendments, the Commission adopts some new definitions in §14.2007 for "AED," "Director," and "LP-Gas Operations." In §14.2010, the Commission adopts a new table to list the forms, their creation or revision dates, and the applicable rule numbers; after these amendments are effective, any form changes will be proposed through an amendment to the table in §14.2010. Other amendments delete references to some forms that are no longer used or update the titles of other forms.

The Commission simultaneously readopts the rules in Chapter 14 in accordance with Texas Government Code, §2001.039. The notice of adopted rule review is filed with the Texas Register concurrently with this adoption.

The Commission received no comments on the proposed amendments or four-year review.

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2004, 14.2007, 14.2010, 14.2013, 14.2016, 14.2019, 14.2022, 14.2025, 14.2028, 14.2031, 14.2034, 14.2037, 14.2040, 14.2043, 14.2046, 14.2049, 14.2052

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

Issued in Austin, Texas, on December 4, 2012.

§14.2007. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) AED--The Commission's Alternative Energy Division.

(2) AFRED--The organizational unit of the AED that administers the Commission's alternative fuels research and education

program, including LNG certification, exempt registration, and training.

(3) Aggregate water capacity--The sum of all individual container capacities as measured by weight or volume of water when the containers in a battery at an installation are full.

(4) ANSI--American National Standards Institute.

(5) API--American Petroleum Institute.

(6) ASME--American Society of Mechanical Engineers.

(7) ASME Code--The American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section I, Section IV, Section VIII, and Section IX.

(8) Automatic fuel dispenser--A fuel dispenser which requires transaction authorization.

(9) Branch manager--See "Operations supervisor."

(10) Certified--Authorized to perform LNG activities under the direction of a licensee as set forth in the Texas Natural Resources Code. Certification alone does not allow an employee to perform those activities which require licensing.

(11) Combustible material--A solid material which, in the form in which it is used and under the conditions anticipated, can be ignited and will burn, support combustion, or release flammable vapors when subjected to fire or heat.

(12) Commercial installation--An LNG equipment installation located on premises other than a single-family dwelling used primarily as a residence.

(13) Commission--The Railroad Commission of Texas.

(14) Company representative--An owner or employee of a licensee designated by that licensee to take any required examinations and to actively supervise LNG operations of the licensee.

(15) Container--Any LNG vessel manufactured to the applicable sections of the API Code, ASME Code, or DOT requirements in effect at the time of manufacture.

(16) Container appurtenances--Components installed in container openings, including but not limited to pressure relief devices, shutoff valves, backflow check valves, excess flow check valves, internal valves, liquid level gauges, pressure gauges, and plugs.

(17) Conversion--The changes made to a vehicle to allow it to use LNG as a motor fuel.

(18) Design pressure--The pressure for which a system or portion of that system is designed.

(19) Dike--A structure used to establish an impounding area.

(20) Director--The director of the AED or the director's delegate.

(21) Dispensing system--That combination of valves, meters, hoses, piping, electrical connections, and fuel connections used to distribute LNG to mobile or motor fuel containers.

(22) DOT--The United States Department of Transportation.

(23) Employee--Any individual who renders or performs any services or labor for compensation, including individuals hired on a part-time or temporary basis, full-time or permanent basis; independent contractors; and owner-employees.

(24) Failsafe--Design features which provide for safe conditions in the event of a malfunction of control devices or an interruption of an energy source or an emergency shutdown.

(25) Final approval--The authority issued by LP-Gas Operations allowing the introduction of LNG into a container and system.

(26) Fired equipment--Any equipment in which the combustion of fuels takes place.

(27) Fixed-length dip tube--A pipe with a fixed open end positioned inside a container at a designated elevation to measure a liquid level.

(28) Ignition source--Any item, substance, or event having adequate temperature and energy release of the type and magnitude sufficient to ignite any flammable mixture of gases or vapors that could occur at a site.

(29) Impounding area--An area defined through the use of dikes or the topography at the site for the purpose of containing any accidental spill of LNG.

(30) Individual--One human being. (See also "Person".)

(31) Interim approval order--The authority issued by the Railroad Commission of Texas following a public hearing allowing construction of an LNG installation.

(32) Labeled--The attachment to equipment or materials of a label, symbol, or other identifying mark of a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and which publishes its findings in a list indicating that the equipment either meets appropriate standards or has been tested and found suitable for use in a specified manner.

(33) LFL--Lower flammability limit.

(34) Licensed--Authorized to perform LNG activities through the issuance of a valid license by LP-Gas Operations.

(35) Licensee--An applicant that has been granted an LNG license by LP-Gas Operations.

(36) Listed--The inclusion of equipment or materials in a list published by a nationally recognized testing laboratory or a Category 50 licensee which conducts product evaluation, periodically inspects production of listed equipment or materials, and whose listing states either that the equipment or material meets appropriate standards or has been tested and found suitable for use in a specified manner.

(37) LNG--Natural gas, consisting primarily of methane, that has been condensed to liquid by cooling.

(38) LNG system--A system of safety devices, containers, and other LNG equipment installed at a facility or on a vehicle and designed for use in the sale, storage, transportation for delivery, or distribution of LNG.

(39) LNG transport--Any vehicle or combination of vehicles and LNG containers designed or adapted for use or used principally as a means of moving or delivering LNG from one place to another, including but not limited to any truck, trailer, semi-trailer, cargo tank, or other vehicle used in the distribution of LNG.

(40) LP-Gas Operations--The organizational unit of the AED that administers the LNG safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(41) Mass transit vehicle--Any vehicle which is owned or operated by a political subdivision of a state, city, or county, and which is used primarily in the conveyance of the general public.

(42) Maximum allowable working pressure--The maximum gauge pressure permissible at the top of completed equipment, containers, or vessels in their operating position for a design temperature.

(43) Mobile fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply for uses other than motor fuel.

(44) Mobile fuel system--An LNG system to supply fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(45) Motor fuel container--An LNG container mounted on a vehicle and used to store LNG as the fuel supply to an engine used to propel the vehicle.

(46) Motor fuel system--An LNG system to supply LNG as a fuel for an engine used to propel the vehicle.

(47) NEC--National Electrical Code (NFPA 70).

(48) NFPA--National Fire Protection Association.

(49) Noncombustible material--A solid material which in no conceivable form or combination with other material will ignite.

(50) Nonlicensee--A person not required to be licensed, but which shall comply with all other applicable rules in this chapter.

(51) Operations supervisor--An individual who actively supervises LNG operations at an outlet.

(52) Outlet--A site operated by an LNG licensee at which the business conducted materially duplicates the operation for which the licensee is initially granted a license.

(53) Person--An individual, sole proprietor, partnership, firm, joint venture, corporation, association, or any other business entity, state agency or institution, county, municipality, school district, or other governmental subdivision.

(54) Point of transfer--The point at which a connection is made to transfer LNG from one container to another.

(55) Pressure relief valve--A valve which is designed both to open automatically to prevent a continued rise of internal fluid pressure in excess of a specified value (set pressure) and to close when the internal fluid pressure is reduced below the set pressure.

(56) Pressure vessel--A container or other component designed in accordance with the ASME Code.

(57) Property line--That boundary which designates the point at which one real property interest ends and another begins.

(58) PSIG--Pounds per square inch gauge.

(59) Public transportation vehicle--A vehicle for hire or service to the general public including but not limited to taxis, buses, and airport courtesy cars.

(60) Repair to container--The correction of damage or deterioration to an LNG container, the alteration of the structure of such a container, or the welding on such a container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

(61) School--A public or private institution which has been accredited through the Texas Education Agency or the Texas Private School Accreditation Commission.

(62) School bus--A vehicle that is sold or used for purposes that include carrying students to and from school or related events.

(63) Special transit vehicle--A vehicle which is primarily used by a school or mass transit authority for special transit purposes such as transport of mobility impaired individuals.

(64) Temporary installation--A dispensing station, either skid-mounted or on a transport unit, that is intended to be used for a finite period of time.

(65) Tentative approval--The authority issued by LP-Gas Operations without a hearing allowing construction of an LNG installation.

(66) Thermal expansion relief valve--A pressure relief valve that is activated by pressure created by a fluid temperature rise.

(67) Trainee--An individual employed by a licensee for a period not to exceed 45 days without that individual having successfully completed the required examinations for the LNG activities to be performed.

(68) Transfer area--That portion of an LNG refueling station where LNG is introduced into or dispensed from a stationary installation.

(69) Transfer system--All piping and equipment used in transferring LNG between containers.

(70) Transition joint--A connector fabricated of two or more metals used to join piping sections of two different materials.

(71) Transport--Any bobtail or semi-trailer equipped with one or more containers.

(72) Transport system--Any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(73) Ultimate consumer--The person controlling LNG immediately prior to its ignition.

(74) Vaporizer--A device other than a container that receives LNG in liquid form and adds sufficient heat to convert the liquid to a gaseous state.

(75) Water capacity--The amount of water in gallons required to fill a container.

§14.2025. Designation of Outlet and Operations Supervisor (Branch Manager).

(a) The Commission shall designate whether a site is an outlet for the purpose of this chapter. Criteria used by the Commission in determining the designation of an outlet include but are not limited to:

(1) distance from other LNG activities operated by the licensee;

(2) whether the operation duplicates the primary LNG operation; and

(3) whether the operation is directly supervised on a routine basis.

(b) A licensee maintaining more than one outlet shall file LNG Form 2001A with LP-Gas Operations designating an operations supervisor (branch manager) at each outlet. The operations supervisor shall pass the management examination administered by AFRED before commencing or continuing the licensee's operations at the outlet.

(c) An operations supervisor may be a company representative of the licensee; however, an individual may be designated as an operations supervisor at only one outlet unless approved by LP-Gas Operations.

(d) The operations supervisor shall be directly responsible for actively supervising LNG operations of the licensee at the designated outlet.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Mary Ross McDonald
Director, Pipeline Safety Division
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For further information, please call: (512) 475-1295

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SUBCHAPTER B. GENERAL RULES FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §§14.2101, 14.2104, 14.2110

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

16 TAC §§14.2307, 14.2310, 14.2313, 14.2316, 14.2319

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER E. PIPING SYSTEMS AND COMPONENTS FOR ALL STATIONARY LNG INSTALLATIONS

16 TAC §14.2416, §14.2437

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER G. ENGINE FUEL SYSTEMS

16 TAC §14.2607, §14.2640

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER H. LNG TRANSPORTS

16 TAC §§14.2704, 14.2705, 14.2707, 14.2710, 14.2746, 14.2749

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public.

Statutory authority: Texas Natural Resources Code, §116.012.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

The Railroad Commission of Texas (Commission) adopts amendments, in Subchapter A, to §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, and 15.100, relating to Purpose; General Provisions; AFRED Forms; Propane Alternative Fuels Advisory Committee; Definitions; Registration of Odorizers, Odorizer Agents, Importers and Importer Agents; Fee on Delivery of Odorized LPG; Report and Remittance of Fees; Exemptions; Odorizer or Importer Refunds; Commission Refund; and Interpretation and Application; and in Subchapter C, to §§15.201, 15.205, 15.210, 15.215, 15.220, 15.235, and 15.240, relating to Purpose; Definitions; Establishment; Duration; Eligibility; Application; Compliance; and Complaints. Section 15.5 is adopted with one change and the remaining sections are adopted without changes to the proposed text as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7637).

The Commission also adopts the repeal of the rules in Subchapter D, §§15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, and 15.350, relating to Purpose; Definitions; Establishment; Duration; Operation; Eligibility; Application; Conditions of Receipt of Rebate; Rebate Amount; Verification; Disallowance; Refund; Compliance; Complaints; and Penalties; and in Subchapter E, §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, and 15.450, relating to Purpose; Definitions; Establishment; Duration; Incentive Amount; Limitations; Eligibility; Application Procedure; Payment of Incentive; Assignment of Incentive; Compliance; Complaints; and Penalties. The two programs outlined in these two subchapters, relating to highway signage and manufactured housing rebates, have been inactive for several years, and the rules are no longer needed.

The Commission withdrew the previously proposed amendments in Subchapter B, §§15.101, 15.105, 15.110, 15.125, 15.150, 15.155, and 15.160, relating to Purpose; Definitions; Establishment; Duration; Application; Assignment of Rebate; Compliance; and Complaints, which were also published in the September 28, 2012, issue of the *Texas Register.* The Commission proposed a new version of amendments which were published in the *Texas Register* on November 23, 2012. The comment period for those amendments ends January 4, 2013.

In the adopted amendments, the Commission updates references to the former Alternative Fuels Research and Education Division (AFRED) and the License and Permit Section of the Gas Services Division to clarify that these administrative units are now part of the Commission's Alternative Energy Division (AED). In other amendments, the Commission adds a new table in §15.5 to list the forms, their creation or revision dates, and the applicable rule numbers; after these amendments are effective, any form changes will be proposed through an amendment to the table in §15.5. The adopted change in the table in §15.5 corrects the title of Form CR-3.

The Commission consolidates definitions which apply to the entire chapter or to several subchapters in the main definitions rule, §15.41. In §15.30, the Commission deletes some definitions which are also found in §15.41. In §15.41, the Commission adopts new definitions for "AED" and "AFRED" and other clarifying changes. In §15.105 and §15.205, the Commission deletes redundant definitions. In §15.160, the Commission amends the title of the director of LP-Gas Operations.

The Commission simultaneously readopts the rules in Chapter 15 in accordance with Texas Government Code, §2001.039. The notice of adopted rule review is filed with the Texas Register concurrently with this adoption.

The Commission received no comments on the proposed amendments or four-year review.

SUBCHAPTER A. GENERAL RULES

16 TAC §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.100

The Commission adopts the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

Issued in Austin, Texas, on December 4, 2012.

§15.5. AFRED Forms.

Under the provisions of the Texas Natural Resources Code, §§113.241 - 113.250, inclusive, the Commission adopts the following forms for use by the Alternative Energy Division.
Figure: 16 TAC §15.5

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. MEDIA REBATE PROGRAM

16 TAC §§15.201, 15.205, 15.210, 15.215, 15.220, 15.235, 15.240

The Commission adopts the amendments under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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SUBCHAPTER D. HIGHWAY SIGNAGE REBATE PROGRAM

16 TAC §§15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, 15.350

The Commission adopts the repeals under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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SUBCHAPTER E. MANUFACTURED HOUSING INCENTIVE PROGRAM

16 TAC §§15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, 15.450

The Commission adopts the repeals under the Texas Natural Resources Code, §113.243, which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §113.2435, which authorizes the Commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LP-gas or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state.

Statutory authority: Texas Natural Resources Code, §113.243 and §113.2435.

Cross-reference to statute: Texas Natural Resources Code, Chapter 113.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT CHARTER SCHOOLS

19 TAC §§100.1, 100.101, 100.105

The State Board of Education (SBOE) adopts amendments to §§100.1, 100.101, and 100.105, concerning open-enrollment charter schools. The amendments to §100.1 and §100.105 are adopted with changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6878). The amendment to §100.101 is adopted without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6878) and will not be republished. The sections address provisions relating to application and selection procedures and criteria, annual report on open-enrollment charter governance, and application to public senior college or university charters and public junior college charters. The adopted amendments align SBOE rules pertaining to the charter application process with commissioner of education rules, clarify the signatories on the original contract for charter, codify practices adopted through the annual governance report pertaining to which family members of board members and school officers must be disclosed, and expand the provisions that would apply to public senior college or university charters and public junior college charters.

Section 100.1 addresses the open-enrollment charter application and selection procedures and criteria. The adopted amendment aligns with commissioner rules, specifies that the chair of a charter holder must sign the written contract, and makes technical edits. Language related to posting charter applications online similar to language in commissioner rule was added as a new subsection (f) at adoption. Subsequent subsections were re-lettered accordingly.

Section 100.101 addresses the collection of information for the annual report on open-enrollment charter school governance. The adopted amendment specifies which family members must be reported and requires that information regarding compensation be provided for family members. Technical edits were also made.

Section 100.105 addresses the applicability of open-enrollment charter rules to public senior college or university charters and public junior college charters. The adopted amendment expands the provisions that would apply to public senior college or university charters and public junior college charters and makes a technical edit. A technical, conforming edit was made in paragraph (2) at adoption to update cross references to provisions adopted in §100.1.

The adopted amendments have procedural and reporting requirements. The annual governance reporting form will require additional information, and the method of reporting will be web-based rather than paper submission. The adopted amendments have locally maintained paperwork requirements. Each charter holder will be required to maintain signed and dated copies of annual governance reporting forms for five years.

The Texas Education Agency has determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The SBOE approved the proposed amendments for second reading and final adoption at the November 2012 meeting.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2013-2014 school year in order to implement the latest policy in a timely manner. The effective date for the amendment is 20 days after filing as adopted.

The Texas Charter Schools Association submitted a letter to the SBOE chair and the chair of the SBOE Committee on School Initiatives requesting that the SBOE not include language in §100.1, duplicative of language in commissioner rule, that would greatly hinder the ability of local communities in Texas to partner with and attract high-quality charter operators from out of state. The SBOE did not include said language in §100.1 as approved for second reading and final adoption on November 16, 2012.

The amendments are adopted under the Texas Education Code (TEC), §7.102(c)(9) and §12.101, which authorize the SBOE to grant a charter on the application of an eligible entity for an open-enrollment charter school or approve a charter revision as provided by the TEC, Chapter 12, Subchapter D; TEC, §12.110, which authorizes the SBOE to adopt an application form and a procedure that must be used to apply for a charter for an open-enrollment charter school and criteria to use in selecting a program for which to grant a charter; TEC, §12.119, which au-

thorizes the SBOE to establish the procedure for collecting information for the annual report on open-enrollment charter school governance, including the specification and description of certain powers and duties; TEC, §12.152, which authorizes the SBOE to grant a charter on the application of a public senior college or university or a public junior college for an open-enrollment charter school; and TEC, §12.154, which authorizes the SBOE to grant a charter to a public senior college or university or a public junior college if the entity satisfies specific criteria in the application, as determined by the SBOE.

The amendments implement the TEC, §§7.102(c)(9), 12.101, 12.110, 12.119, 12.152, and 12.154.

§100.1. Application and Selection Procedures and Criteria.

(a) Prior to each selection cycle, the State Board of Education (SBOE) shall adopt an application form for submission by applicants seeking a charter to operate an open-enrollment charter school. The application form shall address the content requirements specified in Texas Education Code (TEC), §12.111, and contain the following:

(1) the timeline for selection;

(2) required applicant conferences and training prerequisites;

(3) scoring criteria and procedures for use by the review panel selected under subsection (d) of this section;

(4) selection criteria, including the minimum score necessary for an application to be eligible for selection; and

(5) the earliest date an open-enrollment charter school selected in the cycle may open.

(b) The Texas Education Agency (TEA) shall review applications submitted under this section. If an application does not contain all required information and documentation and/or meet the standards in TEC, §12.101, and §100.1015 of this title (relating to Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter), the TEA shall return the application without further processing. The TEA shall establish procedures and schedules for returning applications without further processing. Failure of the TEA to identify any deficiency, or notify an applicant thereof, does not constitute a waiver of the requirement and does not bind the SBOE.

(c) Upon written notice to the TEA, an applicant may withdraw an application.

(d) Applications that meet the standards established under TEC, §12.101, and §100.1015 of this title shall be reviewed and scored by an external application review panel selected by the commissioner of education from a pool of qualified candidates identified through a request for qualification (RFQ) process. The panel shall review and score applications in accordance with the procedures and criteria established in the application form. Review panel members shall not discuss applications with or accept meals, entertainment, gifts, or gratuities in any form from any person or organization with an interest in the results of the selection process for open-enrollment charters. Members of the review panel shall disclose to the TEA immediately upon discovery of any past or present relationship with an open-enrollment charter applicant, including any current or prospective employee, agent, officer, or director of the sponsoring entity, an affiliated entity, or other party with an interest in the selection of the application.

(e) Applications that are not scored at or above the minimum score established in the application form are not eligible for SBOE selection during that cycle. The SBOE may at its sole discretion decline to grant an open-enrollment charter to an applicant whose application was scored at or above the minimum score. No recommendation, ranking, or other type of endorsement by a member or members of the review panel is binding on the SBOE.

(f) All parts of the application are releasable to the public under the Texas Public Information Act and will be posted to the TEA website. Therefore, the following may be redacted from applications posted online:

(1) personal email addresses;

(2) documents that could violate the Family Educational Rights and Privacy Act (FERPA) by identifying potential students of the charter school, including, but not limited to, sign-in lists at public meetings about the school, photographs of existing students if the school is currently operating or photographs of prospective students, and/or letters of support from potential charter school parents and/or students; and

(3) any other information or documentation that cannot be released in accordance with Texas Government Code, Chapter 552.

(g) The SBOE or its designee(s) shall interview applicants whose applications received the minimum score established in the application form. The SBOE may specify individuals required to attend the interview and may require the submission of additional information and documentation prior or subsequent to an interview.

(h) The SBOE may consider criteria that include, but are not limited to, the following when determining whether to grant an open-enrollment charter:

(1) indications that the charter school will improve student performance;

(2) innovation evident in the program(s) proposed for the charter school;

(3) impact statements from any school district whose enrollment is likely to be affected by the proposed charter school, including information relating to any financial difficulty that a loss in enrollment may have on a district;

(4) evidence of parental and community support for the proposed charter school;

(5) the qualifications, backgrounds, and histories of individuals and entities who will be involved in the management and educational leadership of the proposed charter school;

(6) the history of the sponsoring entity of the proposed charter school, as defined in the application form;

(7) indications that the governance structure proposed for the charter school is conducive to sound fiscal and administrative practices; and

(8) indications that the proposed charter school would expand the variety of charter schools in operation with respect to the following:

(A) representation in urban, suburban, and rural communities;

(B) instructional settings;

(C) types of eligible entities;

(D) types of innovative programs;

(E) student populations and programs; and

(F) geographic regions.

(i) An applicant for an open-enrollment charter shall not communicate with a member of an external application review panel concerning a charter school application beginning on the date the panel member is notified of appointment to serve on a specific review cycle and ending when the SBOE takes final action awarding charters under that application. On finding a material violation of the no-contact period, the SBOE shall reject the application or applications affected.

(j) The SBOE may grant an open-enrollment charter subject to additional conditions and shall require fulfillment of such conditions before the charter school is issued a contract. Such conditions must be fulfilled by the awardee, as determined by the commissioner, no later than six months after the date of the award by the SBOE, or the authorization for charter is null and void with no additional action required by the SBOE. The commissioner may establish timelines for submission by the awardee of any documentation to be considered by the commissioner in determining whether a condition has been met.

(k) An open-enrollment charter shall be in the form and substance of a written contract signed by the chair of the SBOE, the chair of the charter holder, and the chief operating officer of the school, but is not a contract for goods or services within the meaning of Texas Government Code, Chapter 2260. The chief operating officer of the school shall mean the chief executive officer of the open-enrollment charter holder under TEC, §12.1012.

§100.105. Application to Public Senior College or University Charters and Public Junior College Charters.

The following provisions of the rules in this subchapter apply as indicated in this section to a public senior college or university charter school or a public junior college charter school as though the public senior college or university charter school or the public junior college charter school were granted a charter under Texas Education Code, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(1) Section 100.1(a) of this title (relating to Application and Selection Procedures and Criteria) applies, except that the State Board of Education (SBOE) may adopt a separate application form for applicants seeking a charter to operate a public senior college or university charter school or a public junior college charter school, which need not be similar to the application form adopted under that subsection for other charter applicants. The SBOE may adopt or amend this separate application form without regard to the selection cycle referenced in that subsection.

(2) Section 100.1(c), (h)(1)-(5) and (8), (j), and (k) of this title apply.

(3) Except as provided in this section, this subchapter does not apply to a public senior college or university charter school or a public junior college charter school.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206269
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 26, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1023

The Texas Education Agency (TEA) adopts the repeal of §129.1023, concerning student attendance. The repeal is adopted without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7839) and will not be republished. The section addresses provisions related to student attendance accounting standards. The adopted repeal removes from the Texas Administrative Code redundant provisions that duplicate those already included in the handbook adopted by reference in 19 TAC §129.1025, Adoption by Reference: Student Attendance Accounting Handbook.

Section 129.1023 was adopted effective May 10, 2001, and amended effective October 23, 2008. The section requires school districts and charter schools to use the student attendance accounting standards established by the commissioner of education and describes the procedures to be included in the annual TEA publication on student attendance accounting standards. The section also specifies that Foundation School Program allotments may be revised as a result of investigative activities by the TEA division responsible for school financial audits.

During the recent statutorily required review of 19 TAC Chapter 129, Subchapter AA, TEA staff determined that the rule is no longer needed as its provisions duplicate those in the student attendance accounting handbook adopted by reference in 19 TAC §129.1025. In addition, stakeholders who participated in the commissioner-initiated rule review process that took place during 2010 and 2011 also recommended that 19 TAC §129.1023 be repealed.

The adopted repeal has no procedural or reporting implications. The adopted repeal has no locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 5, 2012, and ended November 5, 2012. No public comments were received.

The repeal is adopted under the Texas Education Code (TEC), §42.004, which authorizes the commissioner, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The repeal implements the TEC, §42.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206270

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 26, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 475-1497

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19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted without changes to the proposed text as published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7839). The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools. The adopted amendment adopts by reference the *2012-2013 Student Attendance Accounting Handbook.*

Legal counsel with the Texas Education Agency (TEA) has recommended that the procedures contained in each annual student attendance accounting handbook be adopted as part of the Texas Administrative Code. This decision was made in 2000 as a result of a court decision challenging state agency decision making via administrative letters and publications. Given the statewide application of the attendance accounting rules and the existence of sufficient statutory authority for the commissioner of education to adopt by reference the student attendance accounting handbook, staff proceeded with formal adoption of rules in this area. The intention is to annually update the rule to refer to the most recently published student attendance accounting handbook. Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, specifies the minimum standards for systems that are entirely functional without the use of paper, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website each July or August. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adds new subsection (a) to specify that the student attendance accounting guidelines and procedures established by the commissioner of education under 19 TAC §129.21, Requirements for Student Attendance Accounting for State Funding Purposes, and the TEC, §42.004, will be published annually. The adopted amendment also adopts by reference the student attendance accounting handbook for the 2012-2013 school year.

Significant changes to the *2012-2013 Student Attendance Accounting Handbook* from the *2011-2012 Student Attendance Accounting Handbook Version 2* include the following.

Section 1

Text describing the handbook and its purpose has been moved from the middle of Section 1 to the introduction to Section 1.

Requirements related to original documentation of attendance have been clarified.

Information on how to navigate within the electronic version of the handbook has been added.

Section 2

Throughout Section 2, the term "electronic attendance accounting system" has been changed to "automated attendance accounting system."

The statement that failure to provide attendance records during an audit could result in the agency's retaining 100 percent of a district's FSP allotment for the undocumented attendance has been changed to state that this failure will result in the agency's retaining 100 percent of the allotment. Also, a clarification of the term "undocumented attendance" has been added.

Requirements related to period absence reports have been clarified.

Section 3

The example for average daily attendance (ADA) eligibility code 0 that referenced parentally placed private school students aged 5 through 25 years has been corrected to reference parentally placed private school students aged 5 through 21 years.

A subsection on the funding eligibility of time spent in an on-campus online course that is not provided through the Texas Virtual School Network (TxVSN) has been added.

Information on the enrollment eligibility of students who have received a General Educational Development (GED) certificate or have been court-ordered to obtain one has been added.

A brief statement about the offense of parent contributing to nonattendance has been added.

General attendance-taking rules have been clarified.

Information on "excused" absences for participation in certain short-term classes provided by the Texas School for the Blind and Visually Impaired or Texas School for the Deaf has been added. The statement that a student may be considered in attendance for funding purposes if the student is a Medicaid-eligible child participating in the Early and Periodic Screening, Diagnosis, and Treatment programs implemented by the Texas Health and Human Services Commission has been deleted because it impermissibly required the solicitation of confidential information. Information on "excused" absences for participation in naturalization oath ceremonies has been clarified. Information about adopting a policy regarding parental consent for student departures from school has been clarified.

A statement that an exemption from taking a final exam is not an exemption from the "2-through-4-hour" requirement has been added.

Because the term "other health impairment" does not apply to regular education students or to the General Education Homebound (GEH) program, the definition of this term has been removed from the GEH program subsection.

A clarification that time spent on campus taking required state assessments cannot count as any part of the number of hours of GEH service for eligible days present has been added.

Information on state funding of summer school has been revised to clarify that, as with any other student, a student participating in the Optional Flexible School Day Program is not eligible to generate more than 180 days' worth of attendance per year. A statement has been added explaining that, for 2012-2013, the only funded program allowing for state funding of instructional days beyond the 180 days making up the state funding year is a program for providing extended school year services to eligible students.

Section 4

The section on special education has been heavily revised and reorganized. Hyperlinked cross-references and links to applicable TEA web pages have been added throughout the section.

Information and coding charts that appeared in the subsection on special education eligibility but were not specifically related to special education eligibility have been moved to more appropriate subsections. Eligibility information has been expanded and revised.

Special education enrollment procedures have been clarified.

Special education withdrawal procedures have been revised to address required notification and revocation of parental consent for receipt of special education services.

Information on services for private or home school students who are eligible for and in need of special education has been clarified and moved out of the subsection on general special education enrollment procedures and into two separate subsections.

The subsection on instructional arrangement/setting codes has been reorganized so that coding information appears in the numerical order of the codes.

Information on instructional arrangement/setting code 00 has been clarified and revised.

The eligibility criteria for the homebound instructional arrangement/setting have been clarified. Also, the subsection on homebound service eligibility criteria for students with chronic illnesses and/or acute health problems has been deleted, as the eligibility criteria for these students are the same as those for any other student who has been determined to be eligible for special education and related services. Information specific to homebound services and students younger than six years of age has been added. Documentation requirements for special education homebound services have been clarified and revised. A clarification that time spent on campus taking required state assessments cannot count as any part of the number of hours of homebound service for eligible days present has been added.

Information on the mainstream instructional arrangement/setting has been reorganized and revised. The paragraph related to community-based preschools has been moved to the subsection on off home campus instructional arrangements/settings.

Information on the resource room/services instructional arrangements/settings has been clarified.

Information on the self-contained, mild/moderate/severe, regular campus instructional arrangements/settings has been clarified.

A clarification regarding foster homes has been added to the subsection on the residential care and treatment facility instructional arrangements/settings.

Information on reporting of students in the off home campus instructional arrangements/settings has been added.

Information on speech therapy indicator codes has been clarified and revised.

A new major subsection on preschool programs for children with disabilities has been added. The coding charts that appeared in the subsection on special education eligibility in general have been moved to this new subsection and revised.

Information on special education services for infants and toddlers appears in its own major subsection.

Information on special education shared services arrangements appears in its own major subsection. The subsection includes information on regional day school program for the deaf shared services arrangements.

The coding chart titled "Services for Students With Disabilities-Exceptions to the Norm" appears in its own major subsection. Erroneous instructional arrangement/setting coding information for students served in Head Start programs has been corrected in the chart.

Information on extended school year services has been clarified and appears in its own major subsection.

Information on eligible days present and contact hours has been clarified.

Special education documentation requirements have been clarified.

The subsection providing special education instructional arrangement/setting coding examples has been reorganized so that coding information appears in the numerical order of the codes. Examples that appeared in the wrong instructional arrangement/setting code subsection have been moved. Speech therapy indicator code examples have been clarified.

Section 5

In the subsection on career and technical education (CTE) contact-hour funding eligibility, requirements related to teacher certification have been clarified. Also, requirements related to the teacher of record have been revised.

Information on auditing of CTE courses and Public Education Information Management System (PEIMS) coding has been added.

Information on how to determine CTE "V" codes has been clarified.

Information on required documentation for CTE Problems and Solutions courses has been revised.

General CTE documentation requirements have been revised.

Information on the PEIMS 415 record and students who drop a CTE course has been clarified.

Section 6

A statement that the terms "limited English proficient student," "English language learner," and "student of limited English proficiency" are interchangeable has been added to the section's introduction. The subsections making up this section have been reordered to place information on withdrawal and evaluation of exited students after information on program eligibility, eligible days present, and service requirements.

A subsection explaining that districts are required to implement the English language proficiency standards has been added.

The chart containing exit criteria for the bilingual and English as a second language (ESL) education programs has been updated.

A statement that all staff serving limited English proficient students must receive training in sheltered instruction has been added.

In the subsection on student record documentation, the word "permanent" has been removed from references to a student's record, as it implies that documentation must be kept indefinitely instead of for five years from cessation of services. Documentation requirements related to assessment participation have been updated. Information about forwarding of records has been updated.

Section 7

Information on prekindergarten eligibility based on automatic eligibility for the National School Lunch Program has been revised, as has information on prekindergarten eligibility based on homelessness.

Section 10

References to the Texas Youth Commission (TYC) or Texas Juvenile Probation Commission (TJPC) have been changed to be references to the Texas Juvenile Justice Department (TJJD).

The subsection on compensatory and accelerated instruction for at-risk students has been removed, as the information in the subsection was unrelated to attendance accounting.

The subsection on Alternative Education Campuses of Choice and residential facilities evaluated under alternative education accountability (AEA) procedures has been removed, as the information in the subsection was unrelated to attendance accounting.

Information on residential alternative education programs for students in residential facilities has been clarified. Also, a statement about statutorily required notifications that residential facilities must make has been added.

Information specific to on-campus and off-campus disciplinary alternative education programs (DAEPs) has been removed, as it was not directly related to attendance accounting.

Information on evaluation of DAEPs and juvenile justice alternative education programs (JJAEPs) has been moved from the deleted subsection related to entities that are evaluated under AEA procedures, which do not apply to DAEPs and JJAEPs, to the subsection related to DAEPs and the subsection related to JJAEPs.

Information on expulsions has been revised to better reflect statute and to reflect statutory changes that are effective with the 2012-2013 school year.

Information on memorandums of understanding for JJAEPs has been revised to reflect statutory changes that are effective with the 2012-2013 school year.

The chart related to ADA eligibility coding for JJAEP students has been updated to include coding information for JJAEP placements under the TEC, §37.309(b).

Section 11

A subsection related to dual credit course eligibility requirements specific to students enrolled in Early College High Schools has been added.

A subsection on dual credit documentation requirements has been added.

TxVSN student eligibility requirements have been clarified, as has information on TxVSN funding and attendance accounting.

A subsection containing guidance related to remote instruction that is not delivered through the TxVSN has been added.

Section 13

Glossary definitions of obsolete terms have been deleted. The definition of "direct, regularly scheduled" has been revised. The entry for "early childhood intervention" has been changed to be an entry for "early childhood intervention services," and information in the entry has been revised. The entry for "nonpublic day school" has been changed to be an entry for "nonpublic school" that includes information on both nonpublic day schools and residential nonpublic schools.

The adopted amendment places the specific procedures contained in the *2012-2013 Student Attendance Accounting Handbook* in the Texas Administrative Code. The TEA distributes FSP funds according to the procedures specified in each annual student attendance accounting handbook. Data reporting requirements are addressed through the PEIMS.

The handbook has long stated that school districts and open-enrollment charter schools must keep all student attendance documentation for five years from the end of the school year. Any new student attendance documentation required to be kept would correspond with the student attendance accounting requirement changes described previously.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 5, 2012, and ended November 5, 2012. No public comments were received.

The amendment is adopted under the TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program funding for the state virtual school network, including rules regarding attendance accounting; and the TEC, §42.004, 74th Texas Legislature, 1995, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the TEC, §30A.153 and §42.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206271

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: December 26, 2012
Proposal publication date: October 5, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.13

The Texas Board of Chiropractic Examiners (Board) adopts the repeal of §71.13, relating to Chiropractic Specialties. This rule is repealed without changes to the proposal as published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7649), and will not be republished.

The Board repeals §71.13 to allow time for procedures for recognizing chiropractic specialties in the state of Texas to be revised. Additional stakeholder input is necessary before a new §71.13 can be proposed.

Nationally, numerous chiropractic specialties exist in different fields. Doctors practicing in each specialty hold a doctorate degree in chiropractic and also complete post-graduate work and in some cases attain a diplomate or fellow status from national specialty certifying boards. The Board will continue to pursue how they will recognize these national specialties in the state of Texas and regulate use of the term "specialty" and/or "specialist." During the period of time that additional stakeholder input is gathered, the Board feels that the public interest is best served by repealing the existing §71.13.

The Board accepted comments received in writing via mail, fax or email between September 28, 2012 and October 29, 2012. One comment was received, which supported the repeal of §71.13 to allow for stakeholder input "to ensure that only appropriate chiropractic specialties are recognized and that only qualified chiropractors are permitted to use a specialty designation." The Board agrees. No change was made in response to this comment.

The repeal is adopted under Texas Occupations Code §201.152. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206277
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 26, 2012
Proposal publication date: September 28, 2012
For further information, please call: (512) 305-6716

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CHAPTER 75. RULES OF PRACTICE

22 TAC §75.7

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.7, concerning Required Fees and Charges, which places a $50 inactive license processing fee on all inactive license renewals. This rule is adopted without changes to the proposed text as published in the November 2, 2012, issue of the *Texas Register* (37 TexReg 8674) and will not be republished.

Previously, inactive licensees did not have to pay for an inactive license renewal. However, this $50 fee is being implemented to comply with a Contingent Revenue Rider imposed by the Texas Legislature in the Board's appropriation bill pattern for the 2012-2013 biennium. Certain appropriations and 2.0 full time equivalent (FTE) staff positions are contingent upon the Board assessing or increasing fees sufficient to generate, during the 2012-2013 biennium, $146,154 in excess of the Comptroller of Public Accounts' Biennial Revenue Estimate for fiscal years 2012 and 2013. The excess revenue raised in FY 2012 was not quite as high as estimated by the agency, so the Board must raise additional excess revenue to comply with this rider. The appropriations and staff positions contingent upon this fee increase are crucial to the operation of the Board.

Comments received in writing via mail, fax, and email were accepted by the Board from November 2, 2012 to December 3, 2012. No comments were received by the Board on the proposed amendment.

The amendment is adopted under Texas Occupations Code, §201.152, relating to rules, and §201.153, relating to fees. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees as necessary to administer Chapter 201 of the Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 6, 2012.

TRD-201206276
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: December 26, 2012
Proposal publication date: November 2, 2012
For further information, please call: (512) 305-6716

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PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

The Texas Board of Professional Engineers (Board) adopts amendments to §137.7, concerning License Expiration and Renewal, §137.31, concerning Seal Specifications, §137.37, concerning Sealing Misconduct, and §137.65, concerning Action in Another Jurisdiction, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6881) and will not be republished.

The adopted rule change to §137.7 addresses the situation when a license holder is assessed an administrative penalty as part of a Consent Order, Agreed Board Order, or a Final Board Order following a SOAH case that does not include a probated suspension, but the license holder does not pay the administrative penalty as required by the Order. This rule change prevents any license holder who has an unpaid administrative penalty (or who has failed to comply with any other condition of a Consent Order, Agreed Board Order, or Final Board Order) from renewing his or her license until the penalty is paid or the condition is met.

The adopted rule change to §137.31 clarifies the seal requirements and only limits the size of the seal to a maximum size of two inches, rather than specifying two distinct sizes.

The adopted rule change to §137.37 adds the act of using a licensed professional engineer's seal without authorization to the sealing misconduct rule.

The adopted rule change to §137.65 adds clarification concerning the existing authority to discipline Texas license holders under §137.65 for being disciplined in another state. Therefore, the Board has the authority to discipline Texas license holders who perform engineering services in another state even if that other state does not or cannot act on that Texas license holder, so long as the act or omission would be a violation of the Texas Act and Rules if it had occurred in Texas.

The Board received no comments on the posting of these rules. The Board voted to accept these four rules as proposed on November 29, 2012.

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.7

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206229
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 25, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 440-7723

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SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.31, §137.37

The amendments are adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206230
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 25, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 440-7723

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SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.65

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206231
Lance Kinney, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 25, 2012
Proposal publication date: August 31, 2012
For further information, please call: (512) 440-7723

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.10, concerning Supervision of Non-Licensed Persons. The amendment is adopted with non-substantive changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6882). The text of the rule will be republished.

The Board adopts amendments to §573.10 to correct errors in subsection (h) and to clarify the duties and practice limitations of Registered Veterinary Technicians. The adopted rule makes the use of "RVT" in subsection (h) consistent by removing ambiguous references to "non-veterinarians."

The Board also adopts the amendments to §573.10 to create cross-references and remove redundancies with new adopted §573.19, regarding dentistry, which is also adopted elsewhere in this issue of the *Texas Register.* In the adopted amendment to §573.10, the subsection that previously described the scope of practice for licensed equine dental providers has been removed from §573.10 and relocated to adopted new §573.19, so that all of the Board's rules regarding dentistry are consolidated to appear together in new §573.19.

The Board received one comment from an individual veterinary technician, who pointed out that subsection (e) of the proposed rule stated that euthanasia can be performed by a veterinary technician and questioned why this provision was different than the other provisions of §573.10, which use the term "non-veterinarian." For the sake of consistency, the Board has adopted the rule with a non-substantive change from the published proposed amendment, replacing "veterinary technician" in subsection (e) with "non-veterinarian."

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; §801.151(c)(3), which states that the Board shall adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian; and §801.151(d), which states that the Board may adopt rules regarding the work of a person who works under the supervision of a veterinarian and fulfills the requirements established by a board-approved organization for registered veterinary technicians.

§573.10. Supervision of Non-Licensed Persons.

(a) With appropriate supervision and after establishing a veterinarian-client-patient relationship, a veterinarian may delegate veterinary care and treatment duties to non-veterinarian employees, or to the following independent contractors:

(1) licensed equine dental providers, in accordance with §573.19 of this title (relating to Dentistry); or

(2) chiropractors, in accordance with §573.14 of this title (relating to Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation).

(b) A veterinarian shall determine when general, direct, or immediate supervision of a non-veterinarian's actions is appropriate, except where such actions of the non-veterinarian may otherwise be prohibited by law. A veterinarian shall consider both the level of training and experience of the non-veterinarian when determining the level of supervision and duties of non-veterinarians.

(c) A veterinarian is subject to discipline if he or she improperly delegates care and/or treatment duties to a non-veterinarian, or fails to properly supervise the non-veterinarian performing delegated duties.

(d) A non-veterinarian shall not perform the following health care services:

(1) surgery;

(2) invasive dental procedures except as allowed for licensed equine dental providers under §573.19 of this title;

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(e) Euthanasia may be performed by a non-veterinarian only under the immediate supervision of a veterinarian.

(f) A non-veterinarian may administer a rabies vaccine only under the direct supervision of a veterinarian, and only after the veterinarian has properly established a veterinarian-client-patient relationship.

(g) The use of a veterinarian's signature stamp or electronic signature pad on an official health document by a non-veterinarian shall be authorized only under the direct supervision of the vaccinating veterinarian.

(h) When feasible, a veterinarian should delegate greater responsibility to a registered veterinary technician (RVT) registered by the Texas Veterinary Medical Association than to an unlicensed person that is not a RVT.

(1) Under the direct or immediate supervision of a veterinarian, an RVT may:

(A) suture to close existing surgical skin incisions and skin lacerations; and

(B) induce anesthesia.

(2) The procedures authorized to be performed by an RVT in paragraph (1) of this subsection may be performed by a non-RVT only under the immediate supervision of a veterinarian.

(i) Exception for Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a veterinarian may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-veterinarian by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a veterinarian to accept an animal treated under this rule as a patient under these circumstances.

(j) Exception for Care of Hospitalized Animals. A non-veterinarian may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal, so long as the veterinarian has examined the animal(s) and a valid veterinarian-client-patient relationship exists.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 5, 2012.

TRD-201206252
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.19

The Texas Board of Veterinary Medical Examiners (Board) adopts new §573.19, concerning Dentistry, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6884). The rule will not be republished.

The Board adopts a new rule defining dentistry, a term which is used in §801.002(7) of the Veterinary Practice Act, Texas Occupations Code, in the definition of "veterinary medicine" as "veterinary surgery, reproduction and obstetrics, dentistry, ophthalmology, dermatology, cardiology, and any other discipline or specialty of veterinary medicine." Under §801.251 of the Veterinary Practice Act, "a person may not practice, or offer or attempt to practice, veterinary medicine unless the person holds a license to practice veterinary medicine issued under this chapter." Thus, the Veterinary Licensing Act holds that an unlicensed person may not practice dentistry on an animal in Texas. The Veterinary Licensing Act does not, however, define "dentistry," so the Board adopts new §573.19 to provide that definition.

The Board adopts the definition of dentistry with the intention of allowing unlicensed individuals who are not under veterinary supervision to brush teeth of animals and superficially clean the teeth of animals with gauze, cotton swabs, or dental floss, while preventing unlicensed individuals who are not under veterinary supervision from performing any other more invasive treatment on an animal's teeth or gums, including but not limited to using a periodontal scaler on animal teeth to remove plaque or tartar. The new rule does not change that an unlicensed person under veterinary supervision can perform dental treatments other than invasive dental procedures, a term which is defined under §573.80, regarding definitions, as "exposing the dental pulp, or performing extractions." The new rule also does not change that no unlicensed person can perform invasive dental procedures, as defined under §573.80, even when under veterinary supervision.

The Board also adopts new §573.19 to consolidate the Board's rules regarding dentistry into a single rule for clarity and ease of reference for both licensees and the general public. New adopted §573.19 therefore includes a subsection describing the scope of practice for equine dental providers that previously appeared in §573.10, regarding the supervision of non-licensed persons. The Board has adopted a parallel amendment to §573.10, which is also published in this issue of the *Texas Register,* to remove the subsection on the scope of practice for equine dental providers and to create cross-references to new §573.19. In the interests of clarity, new §573.19 also references the prohibition that appears in §573.10, forbidding unlicensed persons from performing any invasive dental procedure as defined under §573.80.

The Board received seven comments from individual licensed veterinarians in support of the proposed rule.

The Board also received 14 comments from individuals who were concerned that the rule meant that veterinary technicians could not perform dentistry under veterinary supervision. These comments all seemed to stem from confusion regarding the definition of "invasive dental procedures," which is defined under §573.80 to mean "exposing the dental pulp, or performing extractions." The adopted rule does not alter the dental procedures that an unlicensed person is allowed to perform under veterinary supervision. While unlicensed persons cannot perform dental procedures that involve exposing the tooth pulp and performing extractions, even under veterinary supervision, an unlicensed person can perform any other form of dental treatment under proper veterinary supervision. Under the adopted rule, an unlicensed person can superficially clean the teeth of animals without veterinary supervision. The Board therefore has not made any change in response to these comments.

The Board received one comment from an unlicensed individual who performs tooth cleanings on small animals using a hand scaler and works under veterinary supervision. This individual expressed concern that she would have to work under direct or immediate supervision. The Board respectfully disagrees. Under the adopted rule, an unlicensed person can perform animal tooth cleanings with a scaler under general supervision of a veterinarian. The Board therefore has not made any change in response to this comment.

The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.151(c)(3), which states that the Board shall adopt rules to ensure that equine dentistry is performed only by a veterinarian who is active and in good standing or by a licensed equine dental provider who is active and in good standing under the appropriate level of supervision of a veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
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For further information, please call: (512) 305-7563

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SUBCHAPTER E. PRESCRIBING AND/OR DISPENSING MEDICATION

22 TAC §573.43

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.43, concerning Controlled Substance Registration, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6885). The rule will not be republished.

The Board has recently encountered situations in which veterinarians were exempt from the requirement to obtain a controlled substance registration under either Texas Department of Public Safety (DPS) or United States Drug Enforcement Administration (DEA) rules and laws, but were concerned that they still had to obtain a controlled substance registration nevertheless in order to comply with §573.43. The Board does not intend its controlled substances registration requirements to be more stringent than that of DEA or DPS. The Board therefore adopts an amendment to §573.43 to clarify that a veterinarian does not need to have a controlled substances registration from either DPS or DEA if that registration is not required by other state or federal law.

The Board also adopts an amendment to §573.43 to correct an error in subsection (b), adding the word "substances" where it was inadvertently not included, so that the phrase now reads "to dispense controlled substances." This amendment is not intended to alter the meaning of the rule.

The Board did not receive any comments regarding the proposed rule.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; and §801.151(c)(1), which states that the Board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
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For further information, please call: (512) 305-7563

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.71

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.71, concerning the Operation of Temporary Limited-Service Veterinary Services, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6886). The rule will not be republished.

In recent years, the Board has requested additional information from veterinarians applying to operate a temporary limited-service veterinary service, beyond the categories of information that were explicitly required under the previous version of §573.71. The Board adopts an amendment to §573.71 to make this additional requested information required by rule, and thereby to make the rule accurately reflect current Board procedure.

The Board did not receive any comments regarding the proposed rule.

The Board adopts the amendment under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.356, which states that the Board by rule may establish the conditions under which a veterinarian may provide temporary limited-service veterinary activities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.80

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.80, concerning Definitions, without changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6886). The rule will not be republished.

The Board adopts an amendment to §573.80 to correct a typographical error in paragraph (10) by adding the prefix "non-" to "veterinarian" so that the sentence reads: "Immediate Supervision--a veterinarian required to immediately supervise a non-veterinarian must be within audible and visual range of both the animal patient and the person under supervision." This change does not alter the Board's interpretation of the meaning of "Immediate Supervision."

The Board did not receive any comments regarding the proposed rule.

The Board adopts the amendment under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and main-

tain a high standard of integrity, skills and practice in the veterinary medical profession; §801.151(c)(1), which states that the Board shall adopt rules to protect the public; and §801.151(d), which states that the board may adopt rules regarding the work of a person who works under the supervision of a veterinarian and fulfills the requirements established by a board-approved organization for registered veterinary technicians.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 139. ABORTION FACILITY REPORTING AND LICENSING

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §139.4, §139.5

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §139.4 and §139.5, concerning the regulation of abortion facilities with changes to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5963).

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 245, requires certain abortion facilities to be licensed by the department. Section 245.011 mandates annual reporting to the department on each abortion that is performed in an abortion facility, which is defined by statute as any place where an abortion is performed. Chapter 139 of this title, Abortion Facility Reporting and Licensing rules, implements Health and Safety Code, Chapter 245. Existing annual reporting requirements apply to all licensed abortion facilities and all facilities where abortions are performed.

SECTION-BY-SECTION SUMMARY

The amendment to §139.4(a) - (e) provides revised and new language to specify the required data to be reported annually to the department by abortion facilities. Subsections (d) - (f) were renumbered as (f) - (h) without changes to the rule text.

Section 139.5(3) amends reporting requirements for physicians. Additionally, the amendment revises reporting requirements concerning abortion complications by adding a "complications reporting form" submission to existing physician reporting requirements.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations and/or groups, and members of the Texas Legislature including the following: Planned Parenthood (Texas Capital Region), Change.org, Concerned Citizens of Texas, Southwestern Women's Surgery Center, and various Texas State Representatives and Senators. Some commenters supported the rules as drafted, others were against the rules in their entirety, and some suggested recommendations for change as discussed in the summary of comments.

Comment: Eight persons wrote in support of the rules, but suggested additional amendments as follows: strike §139.4(d) that addresses the confidentiality of individual reports; require the license number, area of specialty, and signature of the physician who provided the abortion on each report be sent to the department; amend §139.5(3)(A) that requires the abortion complication report to be submitted to the department within 30 days of the complication treatment to instead read "as soon as practicable after diagnosis or treatment of the abortion complication, but in no case more than forty-eight hours after the date of the diagnosis or treatment;" and insert into §139.5(3)(B), the data point of "the number of previous induced abortions of patient."

Response: The commission appreciates and agrees with one of the comments, and the reporting requirement of "the number of previous induced abortions of the patient" was added to §139.5(3)(B)(viii) concerning the additional reporting requirements for physicians.

Comment: Fourteen persons and two petitions commented that the rules should not be implemented as they are the result of certain amendments to filed House Bill (HB) 1602, 82nd Legislature, Regular Session, 2011, and filed HB 1131, 80th Legislature, Regular Session, 2007, that did not pass and therefore does not reflect the will or intent of the Legislature.

Response: The commission appreciates the comments, but does not agree with the comments. The commission has the legal authority to adopt rules relating to regulation of abortion services including reporting requirements and rules relating to the health and safety of the patients in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comments.

Comment: Two persons commented that the reporting requirements are not required by law and are not medically necessary.

Response: The commission appreciates the comments, but does not agree with the comments. The commission has the legal authority to adopt rules relating to regulation of abortion services including reporting requirements and rules relating the health and safety of the patients in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comments.

Comment: One person commented that the increased reporting rules should not be implemented as they are unwarranted, punitive and an attempt to limit a woman's ability to obtain a legal abortion.

Response: The commission appreciates the comment, but does not agree with the comment. The commission has the legal authority to adopt rules relating to regulation of abortion services including reporting requirements and rules relating to the health

and safety of the patients in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comment.

Comment: One person commented that the reporting requirements in §139.4(c)(11) - (15), renumbered as (c)(10) - (14), should be stricken from the rule as they are not related to maternal health; and the reporting of §139.4(c)(16), renumbered as (c)(15), method of pregnancy verification, is redundant when taken in consideration with the implementation of HB 15, the Mandatory Sonogram Law, 82nd Legislature, Regular Session, 2011, which amended Health and Safety Code, Chapters 171 and 241.

Response: The commission appreciates the comments, but does not agree with the comments. The commission has the legal authority to adopt rules relating to the regulation of abortion services in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comments.

Comment: Four persons commented that the reporting requirement of "the patient's highest level of education" in §139.4(c)(10) should be stricken from the rules as it is not related to the actual abortion procedure or maternal health.

Response: The commission appreciates the comments, and one change was made as a result of the comments. The reporting requirement of "the patient's highest level of education" was removed in §139.4(c)(10), resulting in renumbering of the remaining paragraphs of the subsection.

Comment: One person commented that a reporting requirement should be added that clearly indicates whether or not the mandatory sonogram as required by HB 15 (82nd Legislature) was a deciding factor in not proceeding with the abortion; an additional reporting requirement should be added to capture all relevant and applicable data on the male biological contributor (if known); and the term "appropriate state agencies" in §139.4(d)(3) is too broad and should be replaced with "state agencies authorized by state law."

Response: The commission appreciates the comments, but does not agree with the comments. The decision not to proceed with the abortion may or may not occur at the abortion facility. The abortion provider collects information at the time of the abortion but if there is no abortion, there will be no data submitted. The commission finds no regulatory reporting or health and safety purpose in the language relating to the male. The language in §139.4(d)(3) is statutory and thus cannot be modified. No change was made as a result of this comment.

Comment: One person commented that §139.4(c)(15), renumbered as (c)(14), which requires the reporting of how a minor obtained consent, is not only irrelevant to maternal health, but is overly intrusive and raises serious Constitutional questions.

Response: The commission appreciates the comment which did point out that the language of the proposed rule was in error and was supposed to require information as to whether consent was obtained, not how it was obtained. As a result, the reporting requirement has been amended to read: "if the patient is younger than 18, was consent obtained" in §139.4(c)(14).

Comment: Four persons commented that the §139.5(3) requirement to report complications stemming from an abortion is burdensome on physicians as there is no definition of "complication" within the proposed rule or elsewhere in existing statute.

Response: The commission appreciates the comments, but does not agree with the comments. The risks and hazards of having an abortion procedure, as contained in 25 TAC §601.2, provides a list of conditions of what a physician may consider to be a complication. No change was made as a result of the comments.

Comment: One person commented that the reporting requirements of provisions in §139.4(c)(14), renumbered as (c)(13), the method used to dispose of fetal tissue and remains; and in §139.4(c)(16), renumbered as (c)(15), the method of pregnancy verification would need to be obtained from the patient by, or on behalf of a physician, and invades the patient's right to privacy.

Response: The commission appreciates the comments, but does not agree with the comments. The commission has the legal authority to adopt rules relating to the regulation of abortion services in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comments.

Comment: One person commented that the new reporting requirement in §139.4(c)(12) that the physician verify that the patient has signed the Abortion and Sonogram election form, in regards to voluntary and informed consent, is unnecessary and redundant.

Response: The commission appreciates the comment, but does not agree with the comment. The commission has the legal authority to adopt rules relating to regulation of abortion services including reporting requirements and rules relating to the health and safety of the patients in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comment.

Comment: Three persons questioned the department's authority to implement the proposed rules as written.

Response: The commission appreciates the comments, but does not agree with the comments. The commission has the legal authority to adopt rules relating to the regulation of abortion services which include reporting requirements and rules relating to the health and safety of the patients in any abortion facility and all facilities where abortions are performed. No change was made as a result of the comments.

Comment: One person commented that the type of anesthesia used in the abortion procedure should be added in §139.5, Additional Reporting Requirements for Physicians.

Response: The commission appreciates the comment, and two changes were made as a result of this comment. The reporting requirement of "the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia," was added in §139.4(c)(16) and in §139.5(3)(B)(ix).

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code §245.011, concerning rules and minimum standards for the licensing and regulation of abortion facilities required to obtain a license under this chapter; and Government Code §531.0055 and Health and Safety Code §1001.075, which authorize the Ex-

ecutive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§139.4. Annual Reporting Requirements for All Abortions Performed.

(a) The purpose of this section is to implement the annual abortion reporting requirements for each location where abortions are performed, which includes licensed, unlicensed, and exempt facilities, including physicians offices.

(b) The report may not identify by any means the physician performing the abortion or the patient.

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the period of gestation based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient;

(9) the number of previous induced abortions of the patient;

(10) whether the patient viewed the printed material provided under Health and Safety Code, Chapter 171;

(11) whether the sonogram image, verbal explanation of the image, and the audio of the heart sounds were made available to the patient;

(12) whether the patient completed the "Abortion and Sonogram" election form;

(13) method used to dispose of fetal tissue and remains;

(14) if patient is younger than 18, was consent obtained;

(15) the method of pregnancy verification; and

(16) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia.

(d) Except as provided by Health and Safety Code, §245.023, all information and records held by the department under this chapter are confidential and are not open records for the purposes of Government Code, Chapter 552. That information may not be released or made public on subpoena, or otherwise, except that release may be made:

(1) for statistical purposes, but only if a person, patient, or abortion facility is not identified;

(2) with the consent of each person, patient, and abortion facility identified in the information released;

(3) to medical personnel, appropriate state agencies, or county and district courts to enforce this chapter; or

(4) to appropriate state licensing boards to enforce state licensing laws.

(e) The reporting period for each abortion facility is January 1 - December 31 of each year. Each facility shall submit the abortion report(s) to the department no later than January 31 of the subsequent year.

(f) The abortion reports shall be submitted:

(1) on forms approved by the department, by certified mail marked as confidential, to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124;

(2) on a floppy disk in a format approved by the department, by certified mail marked as confidential, to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Texas 78765-4124; or

(3) via a modem in a format approved by the department.

(g) The first annual reporting period for a licensed abortion facility commences on the day the initial license is issued. The report(s) shall contain data for the calendar year in which the initial license is issued. If the abortion facility's licensure status changes, the report(s) shall contain data from the date the initial license was issued through the date the initial license expired, was revoked, was suspended, or was withdrawn.

(h) If a change of ownership has occurred, the previous owner shall submit the report(s) commencing from the date of the previous reporting period and ending on the date the change in ownership of the facility occurred; the report(s) is due 30 days after the date of acquisition. The annual reporting period for the newly acquired facility commences on the day the initial license is issued and shall contain data for the calendar year in which the initial license is issued. If the newly acquired facility's licensure status changes, the report(s) shall contain data from the date the initial license was issued through the date the initial license expired, was revoked, was suspended, or was withdrawn.

§139.5. Additional Reporting Requirements for Physicians.

In addition to the annual reporting required by §139.4 of this title (relating to Annual Reporting Requirements for All Abortions Performed), physicians shall comply with this section when performing third trimester abortions and when performing emergency abortions on certain minors or when abortion complications occur.

(1) Reporting requirements for third trimester abortions.

(A) The purpose of this paragraph is to establish procedures for reporting third trimester abortions as required by the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(B) A physician who performs a third trimester abortion of a viable fetus with a biparietal diameter of 60 millimeters or greater shall certify in writing to the Department of State Health Services (department) the medical indications supporting the physician's judgment that the abortion is either necessary to prevent the death or a substantial risk of serious impairment to the physical or mental health of the woman, or the fetus has a severe and irreversible abnormality, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by the department.

(D) The physician shall return by certified mail, marked as confidential, the certification form and may submit any supporting documents to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124, not later than the 30th day after the date the abortion was performed.

(E) The department shall retain the certification form and supporting documents as a cross-reference to the annual reporting requirements of the Act and this section. The certification form and supporting documents retained by the department are confidential. Any release of the documents shall be in accordance with the provisions of the Medical Practice Act, Occupations Code, Chapters 151 - 160, and 162 - 165.

(F) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required under this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title (relating to License Denial, Suspension, Probation, or Revocation).

(2) Reporting requirements for emergency abortions performed on unemancipated minors.

(A) The purpose of this paragraph is to establish procedures for reporting emergency abortions performed on unemancipated minors, as authorized by Family Code, §33.002(a)(4)(B).

(B) A physician who performs an emergency abortion on an unemancipated minor shall certify in writing to the department the medical indications supporting the physician's judgment that the abortion is necessary either to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function, as identified through reliable diagnostic procedures.

(C) The certification shall be made on a form approved by the department.

(D) The physician shall return by certified mail, marked as confidential, the certification form to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124 not later than 30 days after the date the abortion was performed.

(E) A physician performing abortions at a licensed abortion facility who fails to submit the certification form required by this paragraph may subject the licensed facility to denial, suspension, probation, or revocation of the license in accordance with §139.32 of this title.

(F) If the physician provides parental notice as prescribed by Family Code, §33.002(a)(1), or if the minor has obtained judicial approval as authorized by Family Code, §33.002(a)(2) or §33.002(a)(3), the emergency certification form is not required.

(3) Reporting requirements for abortion complications.

(A) Within 30 calendar days after the date the complication is discovered, a physician shall submit an abortion complication report on a form provided by the department; via certified mail marked as confidential to the Department of State Health Services, Vital Statistics Unit, Post Office Box 4124, Austin, Texas 78765-4124; or electronically, confidentially via an encrypted format approved by the department.

(B) The report must include:

(i) the date of the abortion that caused or may have caused the complication;

(ii) the type of abortion that caused or may have caused the complication;

(iii) the name and type of facility where the abortion was performed;

(iv) the name, date and type of facility where the complication was diagnosed and treated;

(v) description of complications;

(vi) the number of weeks of gestation at which the abortion was performed;

(vii) the number of previous live births of the patient;

(viii) the number of previous induced abortions of the patient; and

(ix) the type of anesthesia, if any, used in the procedure: intravenous sedation or general anesthesia.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.117

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §7.117 *without change* to the proposed text as published in the August 24, 2012, issue of the *Texas Register* (37 TexReg 6524) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The Memorandum of Understanding (MOU) between the TCEQ and the Railroad Commission of Texas (RRC) was last updated in August 2010. House Bill (HB) 2694, Article 2, the TCEQ Sunset Legislation, passed by the 82nd Legislature, 2011, and signed by the governor, transferred from the TCEQ to the RRC duties relating to the protection of groundwater resources from oil and gas associated activities. Specifically, HB 2694, Article 2, amended the Natural Resources Code to revise §91.011 and add §§91.0115, 91.020, and 91.1015 and amended Texas Water Code (TWC), §27.033. The law transfers from the TCEQ to the RRC, effective September 1, 2011, those duties pertaining to the responsibility of preparing groundwater protection advisory/recommendation letters. Since the transfer, the RRC has been responsible for providing surface casing and/or groundwater protection recommendations for oil and gas activities under the jurisdiction of the RRC.

In addition, HB 2694, Article 2, amended TWC, §27.046, transferring from the TCEQ to the RRC the responsibility of issuing, to permit applicants for geologic storage of anthropogenic carbon dioxide (CO_2), a letter of determination stating that drilling and operating the anthropogenic CO_2 injection well for geologic storage or operating the geologic storage facility will not injure any freshwater strata in that area and that the formation or stratum to be used for the geologic storage facility is not freshwater sand.

On September 1, 2011, the TCEQ's Surface Casing Program and staff transferred to the RRC. The RRC renamed the program the Groundwater Advisory Unit, and it is located in the William B. Travis Building, 1701 North Congress, Austin, Texas.

The commission adopts the amendment to §7.117 to adopt by reference a revised MOU between the RRC and the TCEQ. The RRC has adopted an amendment to 16 TAC §3.30, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality, to reflect the changes in law made under HB 2694, Article 2 (see April 6, 2012, issue of the *Texas Register* (37 TexReg 2385)). The specific MOU provisions are in 16 TAC §3.30, while Chapter 7, Memoranda of Understanding, incorporates by reference the rules in 16 TAC §3.30.

A corresponding rulemaking repealing 30 TAC Chapter 339, Groundwater Protection Recommendation Letters and Fees, will be published in a future issue of the *Texas Register.*

Section Discussion

§7.117, Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality

The RRC has amended the MOU between the RRC and the TCEQ to reflect the changes in law made under HB 2694, Article 2 (16 TAC §3.30). The amended MOU was adopted by the RRC on March 20, 2012, and was effective May 1, 2012. The adopted amendment to §7.117 reflects the amendment to 16 TAC §3.30 as adopted by the RRC.

Final Regulatory Impact Determination

The commission reviewed the rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the rule is to update the reference to the MOU between the RRC and TCEQ, to clarify jurisdiction of the respective agencies pursuant to statutory changes from HB 2694. HB 1407, §10, 67th Legislature, 1981, a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, required the Texas Department of Water Resources, the Texas Department of Health, and the RRC to execute an MOU specifying in detail these agencies' interpretation of the division of jurisdiction among the agencies over waste materials that result from or are related to activities associated with the exploration for and the development, production, and refining of oil or gas, and to amend the MOU at any time that the agencies find it to be necessary. The original MOU between the agencies became effective January 1, 1982. The MOU was revised effective December 1, 1987, to reflect legislative clarification of the RRC's jurisdiction over oil and gas wastes and the Texas Water Commission's, successor to the Texas Department of Water Resources, jurisdiction over industrial and hazardous wastes. Senate Bill (SB) 1604, 80th Legislature, 2007, gave TCEQ jurisdiction over certain activities associated with radioactive materials and requires the TCEQ and the RRC to adopt an MOU to define the duties of each agency in respect to radioactive materials. The MOU was revised in 2010 to reflect statutory requirements regarding the jurisdiction over certain radioactive materials and the geologic sequestration of CO_2. And, in 2012 the MOU was revised to reflect jurisdictional changes required by HB 2694 that transferred duties from the commission to the RRC relating to the protection of groundwater resources from certain oil and gas and geologic sequestration activities regulated by the RRC.

The rule does not meet the definition of a major environmental rule because the rule only explains existing agency responsibilities rather than create substantive requirements to protect the environment. The rule references the MOU which is used to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the rule is not an environmental rule.

Additionally, the rule does not meet the definition of a major environmental rule because it is not anticipated that the rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule merely explicates jurisdiction of the respective agencies and does not impose new requirements.

Finally, the rulemaking action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. In this case, the rule does not meet any of these applicability requirements. First, in explicating jurisdiction of the respective agencies, the rule does not exceed a standard set by federal law. Second, the rule does not exceed an express requirement of state law, because HB 1407, §10, 67th Legislature, 1981, which appeared as a footnote to the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7 expressly mandated creation of the MOU including a mandate to amend the MOU at any time that the agencies find it to be necessary. SB 1604, 80th Legislature, 2007, requires TCEQ and the RRC to adopt an MOU to define the duties of each agency. Third, the rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt this rulemaking solely under the commission's general powers but under specific authority as explained under the second point above. Therefore, the commission concludes that the adopted rule does not meet the definition of a major environmental rule.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the rule and performed an assessment of whether the rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rule is to update the reference to the MOU between the RRC and TCEQ used to clarify and explain jurisdiction of the respective agencies pursuant to statutory changes.

Promulgation and enforcement of the rule would be neither a statutory nor a constitutional taking of public or private real property because the rule does not affect real property. Because the rule does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The rule merely updates the reference to the MOU, which is used to clarify and explain jurisdiction of the respective agencies. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §5.05.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the consistency of this rulemaking with the Coastal Management Program.

Public Comment

The comment period closed on September 24, 2012. No comments were received.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is adopted under the Solid Waste Disposal Act, Texas Health and Safety Code (THSC), Chapter 361; the Texas Radiation Control Act, THSC, Chapter 401; TWC, Chapter 26; and the Injection Well Act, TWC, Chapter 27. The amendment is adopted under THSC, §361.024, which authorizes the commission to adopt rules for the management and control of solid waste; THSC, §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; and TWC, §27.019, concerning Rules, Etc., which authorizes the commission to adopt rules required for the performance of the commission's responsibilities under the Injection Well Act.

The adopted amendment implements THSC, §361.016, concerning Memorandum of Understanding by Commission, which requires the commission to adopt by rule any memorandum of understanding between the commission and any other state agency; THSC, §401.069 and §401.414, concerning Memorandum of Understanding and Memoranda of Understanding, which require the commission and the RRC to adopt a memorandum of understanding by rule regarding the agencies' duties under the Texas Radiation Control Act; TWC, §5.104, concerning Memoranda of Understanding, which authorizes the commission to adopt by rule any memorandum of understanding between the commission and any other state agency; TWC, §27.049, concerning Memorandum of Understanding, which requires the commission and the RRC to amend the existing memorandum of understanding in 16 TAC §3.30 or enter a new memorandum of understanding; and HB 2694, 82nd Legislature, 2011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
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Texas Commission on Environmental Quality
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30 TAC §7.127

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts new §7.127.

Section 7.127 is adopted *without change* to the proposed text as published in the August 10, 2012, issue of the *Texas Register* (37 TexReg 5984) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 451, passed by the 82nd Legislature, 2011, requires the commission to adopt rules to implement a "Don't Mess with Texas Water" Program to help prevent illegal dumping that affects surface water of Texas. The legislation requires the commission to coordinate with the Texas Department of Transportation (TxDOT) on aspects of the program. Adopting a Memorandum of Understanding (MOU) will help the TCEQ and TxDOT to implement the Program more efficiently.

Section Discussion

Adopted new §7.127 defines the responsibilities of both the TCEQ and TxDOT in implementing the Don't Mess with Texas Water Program. TCEQ staff worked directly with TxDOT staff to draft the language in adopted new §7.127.

Final Regulatory Impact Determination

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225, because the rule is not a "major environmental rule" and it does not meet the applicability criteria in Texas Government Code, §2001.0225(a) even if it were considered to be a "major environmental rule." A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule is intended to protect the environment by preventing illegal dumping by placing signs on major highway water crossings to provide notice of how to report illegal dumping. The rule does not create any new restrictions or prohibitions against dumping, but it provides notice of how to report illegal dumping. The rule is not a major environmental rule because it is not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Furthermore, even if the adopted rule did meet the definition of a major environmental rule, the rule is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The rulemaking does not meet any of these requirements. First, in explicating the TxDOT and TCEQ's responsibilities in implementing a Don't Mess with Texas Water Program, the adopted rule does not exceed a standard set by federal law. Second, the rule does not exceed the express requirement of Texas Water Code (TWC), §26.053. Third, there is no delegation agreement that would be exceeded by the rule. Fourth, the commission does not adopt this rule solely under the commission's general powers but under specific authority of TWC, §26.053.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received regarding the determination.

Takings Impact Assessment

The commission evaluated the rule and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rule is to delineate the responsibilities of TxDOT and TCEQ in implementing the Don't Mess with Texas Water Program as required under TWC, §26.053. Promulgation of the rule would be neither a statutory nor a constitutional taking of private real property because the rule does not affect private real property. This adopted rule will impose no burdens on private real property. In addition, the rulemaking does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, this adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the Coastal Management Program.

Public Comment

The commission held a public hearing on August 30, 2012, at 2:00 p.m. Commission staff members were available before and after the hearing to address specific questions from those who attended the hearing. The comment period closed on September 10, 2012. The commission did not receive any comments on the proposed rule.

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §5.104(b), which authorizes the commission to enter into a Memorandum of Understanding (MOU) with any other state agency and to adopt by rule any MOU between the commission and the other state agency; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and under Texas Health and Safety Code, §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

This rulemaking implements TWC, §26.053, which requires the commission to adopt rules to implement a program to help prevent illegal dumping that affects surface water of Texas. TWC, §26.053 requires the commission to coordinate with the Texas Department of Transportation (TxDOT) on aspects of the program. Adopting an MOU will help the TCEQ and TxDOT to implement the Program more efficiently.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.387, §30.402

The Texas Commission on Environmental Quality (TCEQ, agency, commission) adopts the amendments to §30.387 and §30.402.

The amendments to §30.387 and §30.402, as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5194) are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The agency's Public Drinking Water Program received a request from Sheppard Air Force Base (SAFB) requesting an exception to the existing rules requiring that all individuals who collect microbiological samples and determine disinfection residuals within its drinking water distribution system be licensed in accordance with Chapter 30 and 30 TAC Chapter 290. Specifically, SAFB requested that active duty military personnel who have completed the Bioenvironmental Engineering Apprentice (BEA) training be allowed to collect microbiological samples and determine disinfection residuals within its drinking water distribution system without holding a public water system operator license issued by the executive director.

According to §30.381(b), public water system operators who perform process control duties in the production or distribution of drinking water as defined in Chapter 290 must be licensed.

Section 290.38(63) defines process control duties as "...Activities that directly affect the potability of public drinking water, including: making decisions regarding the day-to-day operations and maintenance of public water system production and distribution; maintaining system pressures; determining the adequacy of disinfection and disinfection procedures; taking routine microbiological samples; taking chlorine residuals and microbiological samples after repairs or installation of lines or appurtenances; and operating chemical feed systems, filtration, disinfection, or pressure maintenance equipment; or performing other duties approved by the executive director."

The BEA course reviewed by the executive director's staff includes training on: laboratory safety; the Hazardous Communications Act; chlorine safety; characteristics of various water sources, waterborne diseases, and the hydrologic cycle; monitoring plans and sampling requirements for public water systems; basic chemistry and math related to water treatment, distribution, and dosage calculations; cross-connection control and backflow prevention basics in a distribution system; and disinfection concepts and types used in public water systems. The executive director's staff evaluated the BEA course, exam categories, and questions and determined that the BEA course is comparable, but not identical, to the agency's occupational licensing section's basic public drinking water system training.

Once an individual has successfully completed the BEA training and passed the applicable exam, they are certified by the military to perform various duties relating to the drinking water distribution system. SAFB contends that active duty military personnel that have completed the BEA training possess sufficient knowledge and skill to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems and that the time and expense incurred by the military to have active duty military personnel take the additional training and exam to obtain a license issued by the executive director does not add to the protection of the environment or public health.

The executive director's staff also concludes that active duty military personnel who have successfully completed the BEA or equivalent military training, as determined by the executive director, are qualified to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. The executive director's staff also recognizes that, while the exception request came from SAFB, the majority of Texas military facilities use active duty military personnel to collect microbiological samples and determine disinfection residuals and would benefit from the exception.

The rulemaking will amend Chapter 30 by adding a provision that defines a military operator-in-training and a provision that will allow individuals who have successfully completed the BEA, or equivalent military training, as determined by the executive director, to collect microbiological samples and determine disinfection residuals at military facilities, without holding a public water system operator license issued by the executive director. Additionally, the rulemaking will clarify the existing definition of operator-in-training.

Section by Section Discussion

Subchapter K, Public Water System Operators and Operations Companies

The adopted amendment to §30.387, Definitions, will add a definition for military operator-in-training. The adopted change is necessary to identify active duty military personnel who collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. Additionally, the adopted amendment to §30.387 will clarify the existing definition of operator-in-training. This adopted change is necessary to clarify and improve the readability of the rule.

The adopted amendment to §30.402, Exemptions, will allow active duty military personnel who do not hold a public water system operator license issued by the executive director, but have successfully completed the BEA or equivalent military training, as determined by the executive director, to collect microbiological samples and determine disinfection residuals at military facilities' water distribution systems. The adopted change is necessary to save the military the time and expense that is incurred by having active duty military personnel take the additional training and exam to obtain the license issued by the executive director.

Final Regulatory Impact Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules are not subject to that statute. Texas Government Code, §2001.0225 applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the adopted rules is to provide an exception for active duty military personnel who have successfully completed the BEA, or equivalent military training, to collect microbiological samples and determine disinfection residuals without obtaining a public water system operator license issued by the executive director. Additionally, the adopted rules will clarify the existing definition of operator-in-training. The adopted rules are not specifically intended to protect the environment or reduce risk to human health from environmental exposure, but rather to provide an exception for active duty military personnel from obtaining a license issued by the executive director, provided that they have sufficient training. The adopted rules will also provide clarification for the existing definition of operator-in-training. The adopted rules will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the adopted rules do not meet the definition of "a major environmental rule" as defined in Texas

Government Code, §2001.0225(g)(3), and thus, do not require a full regulatory impact analysis.

Furthermore, the adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing. These rules do not exceed state law requirements, and state law requires their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. And finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. There were no public comments received regarding the draft regulatory impact analysis determination during the public comment period.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of the adopted rules is to provide an exception for active duty military personnel who have successfully completed the BEA, or equivalent military training, to collect microbiological samples and determine disinfection residuals without obtaining a public water system operator license issued by the executive director. Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rules do not affect a landowner's rights in private real property because this rulemaking will neither restrict nor limit the owner's right to property nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules are specific to certain functions within water distribution systems at military facilities and do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. There were no public comments received regarding the consistency with the coastal management program during the public comment period.

Public Comment

The commission held a public hearing on July 26, 2012. The comment period closed on August 13, 2012. The commission received one written comment from the Department of Defense (DOD). The DOD supported adoption of the rules as proposed.

Response to Comments

Comments to Subchapter K: Public Water System Operators and Operation Companies

In regards to the proposed revisions to Subchapter K, the DOD commented that it supported the commission's full adoption of the rules as published in the *Texas Register* on July 13, 2012, in particular, the amendment to §30.402, that exempts a military operator-in training from certain public water system licensing requirements.

Response

The commission acknowledges support of the rules by the DOD. The commission made no changes to the rules in response to this comment.

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.013, concerning the General Jurisdiction of the Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, concerning Rules, which requires the commission to adopt rules necessary to carry out its powers and duties; TWC, §5.105, which provides the commission with the authority to establish and approve all general policies of the commission by rule; TWC, §37.002, concerning Rules, which provides the commission with the authority to adopt rules for various occupational licenses; TWC, §37.003, concerning License or Registration Required, which provides that persons engaged in certain occupations must be licensed by the commission; TWC, §37.008, concerning Training; Continuing Education, which provides the commission with the authority to approve training; Texas Health and Safety Code (THSC), §341.033, concerning protection of public water supplies; THSC, §341.034, concerning licensing and registration of persons who perform duties relating to public water supplies; and THSC, §341.0315, which requires public water systems to comply with commission rules and was adopted to ensure the safe supply of drinking water.

These adopted amendments implement TWC, §§5.013, 5.102, 5.103, 5.105, 37.002, 37.003, and 37.008, and THSC, §§341.033, 341.034, and 341.0315.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 285. ON-SITE SEWAGE FACILITIES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§285.3 - 285.6, 285.32 - 285.36, 285.90, and 285.91.

Sections 285.3, 285.6, 285.32 - 285.34, and 285.91 are adopted *with changes* to the proposed text as published in the July 13, 2012, issue of the *Texas Register* (37 TexReg 5198). Sections 285.4, 285.5, 285.35, 285.36, and 285.90 are adopted *without changes* to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking updates the rule requirements. The adopted rules remove setbacks between on-site sewage facility (OSSF) components and drainage easements; clarify that a permit and an approved plan are required to construct, alter, repair, extend, or operate an OSSF; and exempt subdivisions from submitting planning materials when a tract is divided into two five-acre or larger tracts. The adopted rules allow the repair or alteration of existing cluster systems. The adopted rules update sizing formulas for leaching chambers. The adopted rulemaking requires new or replacement disinfection devices to be certified by a third party. The adopted rules add the option to reduce the size of aerobic treatment units when using an equalization tank; establish guidelines for the installation of new equalization tanks; and clarify what constitutes an emergency repair. The adopted rules increase the cleanout spacing to 100 feet for consistency with the Uniform Plumbing Code; add language that applies to pipes that cross drainage easements; and clarify that once tanks are no longer used to hold sewage, they must be abandoned. The adopted rules allow another option for sewage pipes installed under a driveway or sidewalk, and update figures and tables to be consistent with the changes discussed previously.

Section by Section Discussion

§285.3, General Requirements

The rule adoption amends §285.3(a) to clarify that an approved plan is necessary, in addition to a permit, to construct, alter, repair, extend, or operate an OSSF. The adopted amendment clarifies requirements for the public and incorporates statutory language to be consistent with the Texas Health and Safety Code (THSC), §366.051(a).

§285.4, Facility Planning

The rule adoption adds §285.4(a)(1)(C), which does not require the submittal of planning materials if a platted or unplatted subdivision tract is divided into two tracts with five or more acres for family transfers. The adopted amendment will not have a negative impact on water quality because lots that are five or more acres can support an OSSF. The adoption also changes "public water supply" to "public water system" in §285.4(a)(1) to provide consistency with the Public Water Supply Rules (30 TAC Chapter 290).

§285.5, Submittal Requirements for Planning Materials

The adopted rulemaking includes §285.5(a)(2)(E), which requires that all applications for new OSSF construction within the Edwards Aquifer Recharge Zone have a professional design.

§285.6, Cluster Systems

Adopted §285.6(a) and (b) state that new cluster systems are not authorized under Chapter 285, but existing cluster systems may be repaired or altered if there is no increase in the volume of the permitted flow or change in the nature of the permitted flow. Most cluster systems that are failing were previously required to obtain a permit under 30 TAC Chapter 309, Subchapter C, but it was difficult for existing cluster systems to qualify for this permit. The adopted amendment allows cluster system owners to repair or alter the system instead of replacing the system or operating a system that does not meet the permit requirements. Based on comments received, the language in §285.6(b) was changed to clarify that alterations that increase the flow or change the nature of the permitted flow may require authorization under other statute.

§285.32, Criteria for Sewage Treatment Systems

Adopted §285.32(a)(8) was added to provide guidance for pipes that cross a drainage easement. The adopted rule also increases the cleanout spacing to 100 feet for consistency with the Uniform Plumbing Code. Adopted §285.32(c)(1) provides an option to reduce the size of aerobic treatment units through the installation of an equalization tank. The adopted rule also amends §285.32(b)(1)(C) to match the figure contained in §285.90(7). The adopted rule modifies §285.32(d) to clarify when an OSSF must be designed by a professional engineer or a professional sanitarian.

§285.33, Criteria for Effluent Disposal Systems

The adopted rulemaking outlines the requirements for pipe that crosses a drainage easement. The adopted rulemaking also updates the formulas that are used to determine the appropriate length of leaching chambers. It also clarifies the allowable gravel content for soils beneath low pressure dosing and drip irrigation systems. The adopted rule requires that all new disinfection devices used in OSSFs be listed as an American National Standard Institute (ANSI)/National Sanitation Foundation (NSF) Standard 46 approved dispenser or disinfection device for wastewater treatment systems. The adopted rulemaking allows the placement and replacement of a disinfection device on existing systems to be an emergency repair that may be performed by a licensed Installer II, a licensed maintenance provider, or a registered maintenance technician. Third party certification will improve reliability of chlorinators that are used in OSSFs and decrease the potential for disease transmission through OSSFs. Based on comments received, the commission added language in §285.33(d)(2)(D) to include ANSI accredited testing institutions. The commission also changed the reference from "National Science Foundation" to "National Sanitation Foundation" based on comments received.

Seeking Comments Regarding the Mandatory Use of NSF Certified Disinfection Devices

The commission sought comments related to the efficiency of NSF certified disinfection devices and the impacts of transitioning to the mandatory use of such devices by requiring the use of NSF certified disinfection devices in on-site sewage facilities after a specified date. The commission specifically requested comments on the efficiency of disinfection devices, the cost of disinfection devices to the consumer, and an appropriate effective date. The commission received comments from three manufacturers of disinfection equipment and one local designated representative. Based on the comments received and additional research done by staff, the commission is requiring disinfection equipment to be certified as either a chlorine dispenser or a disinfection device on the effective date, and by January 1, 2016, disinfection equipment must be certified as disinfection devices.

§285.34, Other Requirements

The adopted rulemaking amends §285.34(b)(4), which provides the requirements if an equalization tank is used. The adopted rule offers a potentially lower cost option to reduce aerobic treatment unit sizing if an equalization tank is installed.

§285.35, Emergency Repairs

The adopted rulemaking clarifies the list of items that are considered emergency repairs. The adopted rulemaking replaces the word "installer" with "individual authorized to make the repair" to accommodate that an installer, maintenance technician or maintenance provider might perform the emergency repair.

§285.36, Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits

The adopted rulemaking clarifies that a tank that is no longer used to hold sewage must be abandoned.

§285.90, Figures

The adopted rule implements changes in Figure 3 that would provide space for an authorized individual to indicate that the access ports were secured before leaving the site in accordance with House Bill 240, 82nd Legislature, 2011.

§285.91, Tables

The adopted rule clarifies that Table II (Aerobic Treatment Unit Sizing) also applies to apartments and townhomes and clarifies the required aerobic treatment unit sizing for one to three bedroom homes. The adopted rule removes drainage easements from Table X. The adopted rule changes Table X to allow another option for sewage pipes that are installed under a driveway or sidewalk.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §§2001.001 *et seq.,* and determined that the adopted rules are not subject to Texas Government Code, §2001.0225 because they do not meet the definition of "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the adopted rules is to update the rules by removing setbacks between OSSF components and drainage easements; by clarifying that a permit and an approved plan are required to construct, alter, repair, extend, or operate an OSSF; and by exempting subdivisions from submitting planning materials when a tract is divided into two five-acre or larger tracts. The adopted rules are also intended to allow the repair or alteration of existing cluster systems. The adopted rules are intended to update sizing formulas for leaching chambers. The adopted rules are intended to require new or replacement disinfection devices to be certified by a third party. The adopted rules are intended to add the option to reduce the size of aerobic treatment units when using an equalization tank; to establish guidelines for the installation of new equalization tanks; to clarify what constitutes an emergency repair; and to update figures and tables to be consistent with the previous list of changes. Protection of human health and the environment may be a by-product of these adopted rules, but it is not the specific intent of the rules.

Further, these adopted rules would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. These adopted rules are not expected to result in significant fiscal implications for OSSF aerobic system owners, installers, aerobic system maintenance providers, engineers, sanitarians, site evaluators, authorized agents or designated representatives. Similarly, these adopted rules are not expected to affect the environment and public health and safety in any material, adverse way. Thus, these adopted rules do not meet the definition of "a major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3), and do not require a full regulatory impact analysis.

Furthermore, these adopted rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rules do not exceed a federal standard because there are no federal standards regulating on-site sewage facilities. The adopted rules do not exceed an express requirement of state law. THSC, §366.012(a) grants the commission specific authority to adopt rules concerning on-site sewage disposal systems. Also, the adopted rules do not exceed a requirement of an agreement because there are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding on-site sewage facilities. Finally, these rules are being adopted under specific state laws, in addition to the general powers of the agency. Therefore, Texas Government Code, §2001.0225 is not applicable to these adopted rules.

The commission invited public comment regarding this draft regulatory impact analysis determination. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated these adopted rules and performed an analysis of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The purpose of these adopted rules is to update the rules. The adopted rules would substantially advance this stated purpose by removing setbacks between OSSF components and drainage easements; by clarifying that a permit and an approved plan are required to construct, alter, repair, extend, or operate an OSSF; and by exempting subdivisions from submitting planning materials when a tract is divided into two five-acre or larger tracts. The adopted rules allow for the repair or alteration of existing cluster systems, which was not allowed under previous rules. The adopted rules update sizing formulas for leaching chambers. The adopted rules require new or replacement disinfection devices to be certified by a third party. The adopted rules add an option to reduce the size of aerobic treatment units when an equalization tank is used; establish guidelines for the installation of new equalization tanks; clarify what constitutes an emergency repair; and up-

date figures and tables to be consistent with the previous list of changes.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These adopted rules do not affect private real property.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests.

The specific CMP policies applicable to these adopted amendments include Nonpoint Source (NPS) Water Pollution and require, under the THSC, Chapter 366 (governing on-site sewage disposal systems) that on-site disposal systems be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. The adopted amendments will make the rules more protective by allowing the repair or alteration of existing cluster systems and by clarifying what constitutes an emergency repair, and therefore, the amendments are consistent with the CMP policies.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the adopted rules do not relax current treatment or disposal standards.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

Public Comment

A public hearing on this proposal was held in Austin on August 6, 2012. The comment period closed August 13, 2012. The commission received comments from two individuals with DIR Manufacturing (DIR), and from representatives of Gulf Coast Testing (GCT), Clearstream Wastewater Systems (CWS), AAA Wastewater (AAA), Waller County (WC), Lower Colorado River Authority (LCRA), and two individuals with the City of Austin (COA). One individual not affiliated with an organization or company also commented.

Response to Comments

LCRA requested changes to §285.6(b) to clarify that some alterations to an existing cluster system might require authorization under another statute.

The commission agrees and added language to §285.6(b) to clarify that alterations that increase flow or change the nature of the permitted flow may need authorization under other statutes.

LCRA requested that additional language be added to §285.32(a)(8) and §285.33(a)(6) to addresses erosion for drainage easement crossings.

The commission agrees and added language to §285.32(a)(8) and §285.33(a)(6) to clarify that construction should protect the pipe and drainage area from erosion.

One individual commented in support of §285.32(c)(1) which allows an option for flow equalization when using aerobic treatment units.

The commission appreciates this comment. No changes were made in response to this comment.

GCT requested that the language in §285.33(d)(2)(D) that is related to the certification of disinfection equipment should not be limited to approval by NSF International only, but expanded to include any ANSI accredited testing institution.

The commission agrees with this comment and has added language to §285.33(d)(2)(D) to include ANSI accredited testing institutions.

One individual commented that the reference in §285.34(a) should be changed from National Science Foundation to National Sanitation Foundation.

The commission agrees and changed the language in §285.34(a) from National Science Foundation to National Sanitation Foundation.

LCRA recommended changes to §285.90(5) to clarify the maximum single line drainfield restrictions.

This figure was not proposed to be changed. However, the commission will consider this issue in future rulemaking. No changes were made in response to this comment.

AAA commented that the ANSI/NSF Standard 46 testing protocol for disinfection devices is more protective of the environment and the public health when compared to the protocol for chlorine dispensers. The reason given was that the disinfection testing protocol uses treated wastewater and tests bacterial kill rather than using tap water and measuring chlorine added to the tap water.

The commission agrees that the testing protocol for disinfection devices is more protective of the public health and environment than the testing protocol for chlorine dispensers. Adopted §285.33(d)(2)(D) was amended to require that all disinfection equipment be listed as approved disinfection devices under ANSI/NSF Standard 46 beginning three years after the effective date of these rules.

CWS requested a two-year lead time if the commission decides to adopt a rule requiring disinfection equipment to be certified and listed solely as disinfection devices under ANSI/NSF Standard 46.

The commission agrees that lead time is necessary, and §285.33(d)(2)(D) was amended to provide three years before

disinfection equipment is required to be listed as an approved disinfection device under ANSI/NSF Standard 46.

DIR commented that they favor the proposal for new disinfection equipment to be listed as approved dispensers or disinfection devices for wastewater systems by NSF International under ANSI/NSF Standard 46. They also commented that they would not favor a requirement that disinfection equipment be listed solely as disinfection devices by NSF International under ANSI/NSF Standard 46 due to concerns about the cost of developing new technology, the cost of patents, the cost of testing the product and the cost of monitoring fecal coliform rather than chlorine residual. One individual commented that he expects to see a price increase for disinfection devices currently approved under ANSI/NSF Standard 46 if they are required by the rules.

The commission understands that meeting a higher standard for disinfection equipment will include costs to the equipment manufacturers and ultimately to the consumer. Presently, there are multiple manufacturers of certified disinfection equipment, so there should be competition and choices for consumers. There are also benefits provided by improving the performance of disinfection equipment. The commission respectfully does not agree that the field performance of disinfection equipment listed as disinfection devices has to be monitored by measuring fecal coliform. The commission will continue to allow listed disinfection devices to be monitored by either chlorine residual or fecal coliform. No changes to rule language were made as a result of this comment.

WC commented that there was no need to adopt a requirement that disinfection equipment be listed solely as disinfection devices certified by NSF International under ANSI/NSF Standard 46. The commenter felt that equipment certified as chlorine dispensers should be grandfathered. The commenter also stated that disinfection equipment should be sized to hold enough chlorine for three to four months.

The commission respectfully disagrees with the comment that certification and testing of disinfection equipment is not necessary. The commission believes that third party testing to a nationally recognized standard will increase the reliability and performance of disinfection equipment. The commission recognizes that property owners will need to maintain and replenish their disinfection equipment. No changes were made to the rule language as a result of this comment.

One individual commented that disinfection devices certified as chlorine dispensers under ANSI/NSF Standard 46 add too much chlorine to a system and cause premature equipment breakdown. If NSF approved chlorine dispensers are required, the commenter wants to be able to adjust the chlorine level in the field.

The commission shares the concern and agrees with the need to adjust the equipment in the field. We have contacted NSF about allowing field adjustment, and they have indicated a willingness to address this concern. No changes were made to the rule language as a result of this comment.

COA commented that TCEQ should have had broader outreach to the regulated community in announcing the stakeholder meeting. One individual gave three examples of suggested rule changes he would have proposed at the stakeholder meeting if he had been aware of the meeting.

The stakeholder meeting was well attended (27 people). The meeting was posted on the OSSF program Web page on the TCEQ Web site. One state association provided notice to all of their members. The meeting was attended by manufacturers, designated representatives, OSSF installers, OSSF designers and individuals who own septic systems. COA's comments were noted and will be considered for future rulemaking. No changes were made to the rule as a result of this comment.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§285.3 - 285.6

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.012, concerning Declaration of Policy; TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also adopted under Texas Health and Safety Code (THSC), §366.001, concerning Policy and Purpose; THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; THSC, §366.051, concerning Permits; THSC, §366.052, concerning Permit Not Required for On-Site Sewage Disposal on Certain Single Residences; THSC, §366.053, concerning Permit Application; THSC, §366.054, concerning Notice From Installer; THSC, §366.056, concerning Approval of On-Site Sewage Disposal System; THSC, §366.057, concerning Permit Issuance; THSC, §366.058, concerning Permit Fee; and THSC, §366.059, concerning Permit Fee Paid to Department of Authorized Agent.

These adopted amendments implement TWC, §§5.012, 5.013, 5.102, 5.103, and THSC, §§366.001, 366.011, 366.012, 366.051 - 366.054, and 366.056 - 366.059.

§285.3. General Requirements.

(a) Permit required. A person shall hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility (OSSF) unless the OSSF meets one of the exceptions in subsection (f) of this section.

(1) All aspects of the permitting, planning, construction, operation, and maintenance of OSSFs shall be conducted according to this chapter, or according to an order, ordinance, or resolution of an authorized agent.

(2) The executive director is the permitting authority unless a local governmental entity has an OSSF order, ordinance, or resolution approved by the executive director. In areas where the executive director is the permitting authority, the staff from the appropriate regional office shall be responsible for the proper implementation of this chapter.

(3) Permits shall be transferred to a new owner automatically upon sale or other legal transfer of an OSSF.

(4) Conditioning of Permits. The permitting authority may require conditions to a permit in order to ensure that the permitted OSSF system will operate in accordance with the planning materials and system approval. Failure to comply with these conditions is a violation of the permit and this chapter. Any violation of a condition of a permit that would be considered an alteration as defined in §285.2(2) of this title (relating to Definitions) would require a new permit.

(b) General Application Requirements.

(1) The owner or owner's agent must obtain an authorization to construct from the permitting authority before construction may begin on an OSSF. Before an authorization to construct can be issued,

the permitting authority shall require submittal of the following from the owner or owner's agent:

(A) an application, on the form provided by the permitting authority;

(B) all planning materials, according to §285.5 of this title (relating to Submittal Requirements for Planning Materials);

(C) the results of a site evaluation, conducted according to §285.30 of this title (relating to Site Evaluation); and

(D) the appropriate fee.

(2) Variance requests shall be submitted with the application and shall be reviewed by the permitting authority according to subsection (h) of this section.

(3) Before the permitting authority issues an authorization to construct, the owner of OSSFs identified in §285.91(12) of this title (relating to Tables) or the owner's agent, must record an affidavit in the county deed records of the county or counties where the OSSF is located. Additionally, the owner or the owner's agent must submit, to the permitting authority, an affidavit affirming the recording. An example of the affidavit is located in §285.90(2) of this title (relating to Figures). The affidavit must include:

(A) the owner's full name;

(B) the legal description of the property;

(C) that an OSSF requiring continuous maintenance is located on the property;

(D) that the permit for the OSSF is transferred to the new owner upon transfer of the property; and

(E) that at any time after the initial two-year service policy, the owner of an aerobic treatment system for a single family residence shall either obtain a maintenance contract within 30 days of the transfer or maintain the system personally.

(c) Action on Applications. The permitting authority shall either approve or deny an application within 30 days of receiving an application. If the application and planning materials are approved, the permitting authority shall issue an authorization to construct. If the application and planning materials are denied, the permitting authority shall explain the reasons for the denial in writing to the owner, and the owner's agent.

(d) Construction and Inspection.

(1) An authorization to construct is valid for one calendar year from the date of its issuance. If the installer does not request a construction inspection by the permitting authority within one year of the issuance of the authorization to construct, the authorization to construct expires, and the owner will be required to submit a new application and application fee before an OSSF can be installed. A new application and application fee are not required if the owner decides not to install an OSSF.

(2) The installer shall notify the permitting authority at least five working days (Monday through Friday, excluding holidays) before the date the OSSF will be ready for inspection.

(3) The permitting authority shall conduct a construction inspection.

(4) If the OSSF does not pass the construction inspection, the permitting authority shall:

(A) at the close of the inspection, advise the owner and the owner's agent, if present, of the deficiencies identified and that the OSSF cannot be used until it passes inspection; and

(B) within seven calendar days after the inspection, issue a letter to the owner and the owner's agent listing the deficiencies identified and stating that the OSSF cannot be used until it passes inspection.

(5) If a reinspection is necessary, a reinspection fee may be assessed by the permitting authority.

(6) The reinspection fee must be paid before the reinspection is conducted.

(e) Notice of Approval.

(1) Within seven calendar days after the OSSF has passed the construction inspection, the permitting authority shall issue, to the owner or owner's agent, a written notice of approval for the OSSF.

(2) The notice of approval shall have a unique identification number, and shall be issued in the name of the owner.

(f) Exceptions.

(1) An owner of an OSSF will not be required to comply with the permitting, operation, and installation requirements of this chapter if the OSSF is not creating a nuisance and:

(A) the OSSF was installed before September 1, 1989, provided the system has not been altered, and is not in need of repair;

(B) the OSSF was installed before the effective date of the order, ordinance, or resolution in areas where the local governmental entity had an approved order, ordinance, or resolution dated before September 1, 1989, provided the system has not been altered and is not in need of repair; or

(C) the owner received authorization to construct from a permitting authority before the effective date of this chapter.

(2) No planning materials, permit, or inspection are required for an OSSF for a single family dwelling located on a tract of land that is ten acres or larger and:

(A) the OSSF is not causing a nuisance or polluting groundwater;

(B) all parts of the OSSF are at least 100 feet from the property line;

(C) the effluent is disposed of on the property; and

(D) the single family dwelling is the only dwelling located on that tract of land.

(3) Connecting recreational vehicles or manufactured homes to rental spaces is not considered construction if the existing OSSF system is not altered.

(g) Exclusions. The following systems are not authorized by this subchapter and may require a permit under Chapter 205 or Chapter 305 of this title (relating to General Permits for Waste Discharges or Consolidated Permits, respectively):

(1) one or more systems that cumulatively treat and dispose of more than 5,000 gallons of sewage per day on one piece of property;

(2) any system that accepts waste that is either municipal, agricultural, industrial, or other waste as defined in Texas Water Code, Chapter 26;

(3) any system that will discharge into or adjacent to waters in the state; or

(4) any new cluster systems.

(h) Variances. Requests for variances from provisions of this chapter may be considered by the appropriate permitting authority on a case-by-case basis.

(1) A variance may be granted if the owner, or a professional sanitarian or professional engineer representing the owner, demonstrates to the satisfaction of the permitting authority that conditions are such that equivalent or greater protection of the public health and the environment can be provided by alternate means. Variances for separation distances shall not be granted unless the provisions of this chapter cannot be met.

(2) Any request for a variance under this subsection must contain planning materials prepared by either a professional sanitarian or a professional engineer (with appropriate seal, date, and signature).

(i) Unauthorized systems. Boreholes, cesspools, and seepage pits are prohibited for installation or use. Boreholes, cesspools, and seepage pits that treat or dispose of less than 5,000 gallons of sewage per day shall be closed according to §285.36 of this title (relating to Abandoned Tanks, Boreholes, Cesspools, and Seepage Pits). Boreholes, cesspools, and seepage pits that exceed 5,000 gallons of sewage per day must be closed as a Class V injection well under Chapter 331 of this title (relating to Underground Injection Control).

§285.6. Cluster Systems.

(a) Cluster systems are not authorized under this chapter after the effective date of these rules. Cluster systems may be authorized under other chapters of this title including Chapter 331 of this title (relating to Underground Injection Control).

(b) Existing cluster systems may be repaired or altered under this chapter. However, the alteration may not result in an increase in the volume of the permitted flow or change the nature of the permitted flow. Existing cluster systems may be required to be authorized under other chapters of this title when the system has to be expanded or altered in a manner that increases the volume or changes the nature of the permitted flow.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §§285.32 - 285.36

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.012, concerning Declaration of Policy; TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also adopted under Texas Health and Safety Code (THSC), §366.001, concerning Policy and Purpose; THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; THSC, §366.051, concerning Permits; THSC, §366.052, concerning Permit Not Required for On-Site Sewage Disposal on Certain Single Residences; THSC, §366.053, concerning Permit Application; THSC, §366.054, concerning Notice From Installer; THSC, §366.056, concerning Approval of On-Site Sewage Disposal System; THSC, §366.057, concerning Permit Issuance; THSC, §366.058, concerning Permit Fee; and THSC, §366.059, concerning Permit Fee Paid to Department of Authorized Agent.

These adopted amendments implement TWC, §§5.012, 5.013, 5.102, 5.103, and THSC, §§366.001, 366.011, 366.012, 366.051 - 366.054, and 366.056 - 366.059.

§285.32. Criteria for Sewage Treatment Systems.

(a) Pipe from building to treatment system.

(1) The pipe from the sewer stub out to the treatment system shall be constructed of cast iron, ductile iron, polyvinyl chloride (PVC) Schedule 40, standard dimension ratio (SDR) 26 or other material approved by the executive director.

(2) The pipe shall be watertight.

(3) The slope of the pipe shall be no less than 1/8 inch fall per foot of pipe.

(4) The sewer stub out should be as shallow as possible to facilitate gravity flow.

(5) A two-way cleanout plug must be provided between the sewer stub out and the treatment tank. Only sanitary type fittings constructed of PVC Schedule 40 or SDR 26 shall be used on this section of the sewer. An additional cleanout plug shall be provided every 100 feet on long runs of pipe and within five feet of 90 degree bends.

(6) Additional cleanout plugs shall be of the single sanitary type.

(7) The pipe shall have a minimum inside diameter of three inches.

(8) Pipe that crosses drainage easements shall be sleeved with American Society for Testing and Materials (ASTM) Schedule 40 pipe; the pipes shall be buried at least one foot below the surface, or buried less than one foot and encased in concrete; the outside pipe shall have locater tape attached to the pipe; and markers shall be placed at the easement boundaries to indicate the location of the pipe crossing. Crossings shall be designed and constructed in a manner that protects the pipe and the drainage way from erosion.

(b) Standard treatment systems.

(1) Septic tanks. A septic tank shall meet the following requirements.

(A) Tank volume. The liquid volume of a septic tank, measured from the bottom of the outlet, shall not be less than established in §285.91(2) of this title (relating to Tables). Additionally, the liquid depth of the tank shall not be less than 30 inches.

(B) Inlet and outlet devices. The flowline of the tank's inlet device in the first compartment of a two-compartment tank, or in the first tank in a series of tanks, shall be at least three inches higher than the flowline of the outlet device. For a configuration of the tank

and inlet and outlet devices, see §285.90(6) and (7) of this title (relating to Figures). The inlet devices shall be "T" branch fittings, constructed baffles or other structures or fittings approved by the executive director. The outlet devices shall use a "T" unless an executive director approved fitting is installed on the outlet. All inlet and outlet devices shall be installed water tight to the septic tank walls and shall be a minimum of three inches in diameter.

(C) Baffles and series tanks. All septic tanks shall be divided into two or three compartments by the use of baffles or by connecting two or more tanks in a series.

(i) Baffled tanks. In a baffled tank, the baffle shall be located so that one half to two thirds of the total tank volume is located in the first compartment. Baffles shall be constructed the full width and height of the tank with a gap between the top of the baffle and the tank top. The baffle shall have an opening located below the liquid level of the tank at a depth between 25% and 50% of the liquid level. The opening may be a slot or hole. If a "T" is fitted to the slot or hole, the inlet to the fitting shall be at the depth stated in this paragraph. See §285.90(6) of this title for details. Any metal structures, fittings, or fastenings shall be stainless steel.

(ii) Series tanks. Two or more tanks shall be arranged in a series to attain the required liquid volume. The first tank in a two-tank system shall contain at least one half to two thirds the required volume. The first tank in a three-tank system shall contain at least one-third of the total required volume, but no less than 500 gallons. The first tank in a four or more tank system shall contain no less than 500 gallons, and the last tank in a four or more tank system shall contain no more than one third of the total required volume. Interconnecting inlet and outlet devices may be installed at the same elevation for multiple tank installations.

(D) Inspection or cleanout ports. All septic tanks shall have inspection or cleanout ports located on the tank top over the inlet and outlet devices. Each inspection or cleanout port shall be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and for equipment removal. Septic tanks buried more than 12 inches below the ground surface shall have risers over the port openings. The risers shall extend from the tank surface to no more than six inches below the ground. The risers shall be sealed to the tank. The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports. The risers shall be fitted with removable watertight caps and prevent unauthorized access.

(E) Septic tank design and construction materials. The septic tank shall be of sturdy, water-tight construction. The tank shall be designed and constructed so that all joints, seams, component parts, and fittings prevent groundwater from entering the tank, and prevent wastewater from exiting the tank, except through designed inlet and outlet openings. Materials used shall be steel-reinforced poured-in-place concrete, steel-reinforced precast concrete, fiberglass, reinforced plastic polyethylene, or other materials approved by the executive director. Metal septic tanks are prohibited. The septic tank shall be structurally designed to resist buckling from internal hydraulic loading and exterior loading caused by earth fill and additional surface loads. Tanks exhibiting deflections, leaks, or structural defects shall not be used. Sweating at construction joints is acceptable on concrete tanks.

(i) Precast concrete tanks. In addition to the general requirements in this subparagraph, precast concrete tanks shall conform to requirements in the Materials and Manufacture Section and the Structural Design Requirements Section of ASTM Designation: C 1227, Standard Specification for Precast Concrete Septic Tanks (2000) or under any other standards approved by the executive director. A professional engineer shall verify in writing that the manufacturer is in compliance with ASTM Standard C 1227. This verification shall be submitted to the permitting authority from the tank manufacturer. If this verification has not been previously submitted or accepted by the permitting authority, a new verification shall be completed within 30 days of the effective date of this section.

(ii) Fiberglass and plastic polyethylene tank specifications.

(I) The tank shall be fabricated to perform its intended function when installed. The tank shall not be adversely affected by normal vibration, shock, climate conditions, nor typical household chemicals. The tank shall be free of rough or sharp edges that would interfere with installation or service of the tank.

(II) Full or empty tanks shall not collapse or rupture when subjected to earth and hydrostatic pressures.

(iii) Poured-in-place concrete tanks. Concrete tanks shall be structurally sound and water-tight. The concrete tank shall be designed by a professional engineer.

(iv) Tank manufacturer specifications. All precast or prefabricated tanks shall be clearly and permanently marked, tagged, or stamped with the manufacturer's name, address, and tank capacity. The identification shall be near the level of the outlet and be clearly visible. Additionally, the direction of flow into and out of the tank shall be indicated by arrows or other identification, and shall be clearly marked at the inlet and outlet.

(F) Installation of tanks. For gravity disposal systems, septic tanks must be installed with at least a 12 inch drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A minimum of four inches of sand, sandy loam, clay loam, or pea gravel, free of rock larger than 1/2 inch in diameter, shall be placed under and around all tanks, except poured-in-place concrete tanks. Unless otherwise approved by the permitting authority, tank excavations shall be left open until they have been inspected by the permitting authority. Tank excavations must be backfilled with soil or pea gravel that is free of rock larger than 1/2 inch in diameter. Class IV soils and gravel larger than one-half inch in diameter are not acceptable for use as backfill material. If the top of a septic tank extends above the ground surface, soil may be mounded over the tank to maintain slope to the drainfield.

(G) Pretreatment (Trash) tanks. If an aerobic treatment unit does not prevent plastic and other non-digestible sewage from interfering with aeration lines and diffusers, the executive director may require the use of a pretreatment tank. All pretreatment tanks shall meet all applicable structural and fitting requirements of this section.

(H) Leak Testing. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the tank riser(s) may be required.

(2) Intermittent sand filters. A typical layout and cross-section of an intermittent sand filter is presented in §285.90(8) of this title. Requirements for intermittent sand filters are as follows.

(A) Sand media specifications. Sand filter media must meet ASTM C-33 specifications as outlined in §285.91(11) of this title.

(B) Loading rate. The loading rate shall not exceed 1.2 gallons per day per square foot.

(C) Surface area. The minimum surface area shall be calculated using the formula: Q/1.2=Surface Area (Square Feet), where Q is the wastewater flow in gallons per day.

(D) Thickness of sand media. There shall be a minimum of 24 inches of sand media.

(E) Filter bed containment. The filter bed containment shall be an impervious lined pit or tank. Liners shall meet the specifications detailed in §285.33(b)(2)(A) of this title (relating to Criteria for Effluent Disposal Systems).

(F) Underdrains. For gravity discharge of effluent to a drainfield, there shall be a three inch layer of pea gravel over a six inch layer of 0.75 inch gravel, that contains the underdrain collection pipe. When pumpwells are to be used to pump the effluent from the underdrain to the drainfield, they must be constructed of concrete or plastic sewer pipe. The pumpwell must contain a sufficient number of holes so that effluent can flow from the gravel void space as rapidly as the effluent is pumped out of the pumpwell to the drainfield. Refer to §285.90(9) of this title.

(c) Proprietary treatment systems. This subsection does not apply to proprietary septic tanks described in subsection (b)(1) of this section.

(1) Tank sizing. Proprietary treatment systems that serve single family residences, combined flows from single family residences, or multi-unit residential developments shall be designed using Table II in §285.91(2) of this title unless there is an equalization tank preceding the aerobic treatment unit. If there is an equalization tank preceding the aerobic treatment unit, the equalization tank shall meet the requirements set forth in §285.34(b)(4) of this title (relating to Other Requirements) and the aerobic treatment units can be sized using the wastewater flows in Table III in §285.91(3) of this title. Proprietary Treatment systems for non-residential facilities shall be sized using the wastewater flows in Table III in §285.91(3) of this title. Leak testing shall be performed in accordance with subsection (b)(1)(H) of this section.

(2) Installation. Proprietary treatment systems shall be installed according to this subchapter. If the manufacturer has installation specifications that are more stringent than given in this subchapter, the manufacturer shall submit these specifications to the executive director for review. If approved by the executive director, the treatment systems may be installed according to these more stringent specifications. Any subsequent changes to these manufacturer's installation specifications must be approved by the executive director before installation. Inspection, cleanout ports, or maintenance ports shall have risers installed according to the riser installation provisions in subsection (b)(1)(D) of this section. Tank excavations shall be backfilled according to the backfill provisions in subsection (b)(1)(F) of this section. At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(3) System maintenance. Ongoing maintenance contracts are required for all proprietary treatment systems except those systems maintained by homeowners under the provisions of §285.7(d)(4) of this title (relating to Maintenance Requirements). The maintenance contract shall satisfy §285.7(d) of this title.

(4) Electrical wiring. Electrical wiring for proprietary systems shall be according to §285.34(c) of this title.

(5) Approval of proprietary treatment systems. Proprietary treatment systems must be approved by the executive director prior to their installation and use. Approval of proprietary treatment systems shall follow the procedures found in this section. After the effective date of these rules, only systems tested according to subparagraph (A) or (B) of this paragraph will be placed on the list of approved systems. The list may be obtained from the executive director. All systems on the list of approved systems on the effective date of these rules shall continue to be listed subject to the retesting requirements in paragraph (6) of this subsection. In addition, all proprietary treatment systems undergoing testing under this paragraph on the effective date of these rules shall be considered for inclusion on the list of approved systems.

(A) Treatment systems that have been tested by and are currently listed by National Sanitation Foundation (NSF) International as Class I systems under NSF Standard 40 (2005), or have been tested and certified as Class I systems according to NSF Standard 40 (2005), by an American National Standard Institute (ANSI) accredited testing institution, or under any other standards approved by the executive director, shall be considered for approval by the executive director. All systems approved by the executive director on the effective date of these rules shall continue to be listed on the list of approved systems, subject to retesting under the requirements of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director. The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997) or under any standards approved by the executive director.

(i) Proprietary units under this section have been approved to treat flows equal to or less than their rated capacity and with an influent wastewater strength ranging from a 30-day average Carbonaceous Biochemical Oxygen Demand (CBOD) concentration between 100 milligrams per liter (mg/l) and 300 mg/l and a 30-day average TSS concentration between 100 mg/l and 350 mg/l.

(ii) Proprietary units may be used as components in an overall treatment system treating influent stronger than the ranges listed in this section. However, the overall treatment system will be considered a non-standard treatment system and shall meet the requirements set forth in subsection (d) of this section.

(B) Treatment systems that will not be accepted for testing because of system size or type by NSF International, or ANSI accredited third party testing institutions, and are not approved systems at the time of the effective date of these rules, may only be approved in the following manner.

(i) The proprietary systems shall be tested by an independent third party for two years and all the supporting data from the test shall be submitted to the executive director for review and approval, or denial before the system is marketed for sale in the state.

(ii) The independent third party shall obtain a temporary authorization from the executive director before testing. The temporary authorization shall contain the following:

(I) the number of systems to be tested (between 20 and 50);

(II) the location of the test sites (the test sites must be typical of the sites where the system will be used if final authorization is granted);

(III) provisions as to how the proprietary system will be installed and maintained;

(IV) the testing protocol for collecting and analyzing samples from the system;

(V) the equipment monitoring procedures, if applicable; and

(VI) provisions for recording data and data retention necessary to evaluate the performance as well as the effect of the proprietary system on public health, groundwater, and surface waters.

(iii) Permitting authorities may issue authorizations to construct upon receipt of the temporary authorization. The owner must be advised, in writing, that the system is temporarily approved for testing. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense. A system installed under this subparagraph is the responsibility of the manufacturer until the system has obtained final authorization by the executive director according to this subparagraph.

(iv) Upon completion of the two-year test period, the executive director shall require the independent third party to submit a detailed report on the performance of the system. After evaluating the report, the executive director may issue conditional approval of the system, or may deny use of the system.

(I) The conditional approval will authorize installations only in areas similar to the area in which the system was tested.

(II) The conditional approval shall be for a specified performance and evaluation (monitoring) period, not to exceed an additional five years. The system must be monitored according to a plan approved by the executive director. Approval or disapproval of these systems will be based on their performance during the monitoring period. Failure of one or more of the installed systems may be cause for disapproval of the proprietary system. The owner must be advised, in writing, that the system is conditionally approved.

(III) If the executive director denies use of the system after the two-year period, the executive director shall provide, in writing, the reasons for denying the use of the system. If a system fails, regardless of the reason, it shall be replaced with a system that meets the requirements of this subchapter by the manufacturer at the manufacturer's expense.

(v) Upon successful completion of the monitoring period, the monitoring requirements may be lifted by the executive director, the notice of approval may be made permanent for the test systems and the systems will be deemed suitable for use in conditions similar to areas in which the systems were tested and monitored.

(6) System reviews. The manufacturers of systems that are approved for listing under this section shall ensure that their systems are reviewed every seven years, or as often as deemed necessary by the executive director, starting from the date the system was originally added to the executive director's approved list. All reviews shall be completed before the end of the seven-year period. The manufacturer of any system that was approved by the executive director more than seven years before the effective date of these rules, will be given 365 days from the effective date of these rules to complete a review.

(A) The review shall be performed by either an ANSI accredited institution according to the reevaluation requirements in NSF Standard 40 (2005), and Certification Policies for Wastewater Treatment Devices (1997), or under any standards approved by the executive director, or by an independent third party for those systems not tested under NSF Standard 40.

(B) If the system being reviewed was not approved under the requirements of NSF Standard 40, the independent third party shall evaluate between 20 and 50 systems in the state that have been in operation for at least two years and are the same design as originally approved.

(C) The review under this subsection shall include an evaluation of:

(i) the short-term and long-term effectiveness of the system;

(ii) the structural integrity of the system;

(iii) the maintenance of the system;

(iv) owner access to maintenance support;

(v) any impacts that system failures may have had on the environment; and

(vi) an evaluation of the effectiveness of the manufacturer's installer training program.

(D) Any system that is not approved by the executive director as a result of the review will be removed from the list of approved systems. The manufacturer shall ensure that maintenance support remains available for the existing systems.

(d) Non-standard treatment systems. All OSSFs not described or defined in subsections (b) and (c) of this section are non-standard treatment systems. These systems shall be designed by a professional engineer or a professional sanitarian in accordance with §285.91(9) of this title, and the planning materials shall be submitted to the permitting authority for review according to §285.5(b)(2) of this title (relating to Submittal Requirements for Planning Materials). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority.

(1) Non-standard treatment systems include all forms of the activated sludge process, rotating biological contactors, recirculating sand filters, trickling type filters, submerged rock biological filters, and sand filters not described in subsection (b)(2) of this section.

(2) The planning materials for non-standard treatment systems submitted for review will be evaluated using the criteria established in this chapter, or basic engineering and scientific principles.

(3) Approval for a non-standard treatment system is limited to the specific system described in the planning materials. Approval is on a case-by-case basis only.

(4) The need for ongoing maintenance contracts shall be determined by the permitting authority based on the review required by §285.5(b) of this title. If the permitting authority determines that a maintenance contract is required, the contract must meet the requirements in §285.7 of this title.

(5) Electrical wiring for non-standard treatment systems shall be installed according to §285.34(c)(4) of this title.

(e) Effluent quality. The following effluent criteria shall be met by the treatment systems for those disposal systems listed in §285.33 of this title that require secondary treatment.
Figure: 30 TAC §285.32(e) (No change.)

(f) Other Design Considerations.

(1) Restaurant/food establishment sewage. When designing for restaurants, food service establishments, or similar activities, the minimum design strength value shall be 1,200 mg/l Biochemical Oxygen Demand (BOD) after a properly sized grease trap/interceptor. It is the responsibility of the designer to properly design a system which reduces the wastewater strength to 140 mg/l BOD prior to disposal unless secondary treatment levels are required.

(2) Other high-strength sewage. For situations where sewage as defined in this chapter is expected to be a higher strength than residential sewage, it is the responsibility of the professional designer to justify sewage design strength estimations and properly design a system that reduces the wastewater strength to 140 mg/l

BOD prior to disposal unless secondary treatment levels are required. Residential sewage is sewage that has a strength of less than 300 mg/l BOD.

(3) Flow equalization. The designer should consider whether flow-equalization will be needed for the treatment system to function properly.

§285.33. Criteria for Effluent Disposal Systems.

(a) General requirements.

(1) All disposal systems in this section shall have an approved treatment system as specified in §285.32(b) - (d) of this title (relating to Criteria for Sewage Treatment Systems).

(2) All criteria in this section shall be met before the permitting authority issues an authorization to construct.

(3) The pipe between all treatment tanks and the pipe from the final treatment tank to a gravity disposal system shall be a minimum of three inches in diameter and be American Society for Testing and Materials (ASTM) 3034, Standard dimension ratio (SDR) 35 polyvinyl chloride (PVC) pipe or a pipe with an equivalent or stronger pipe stiffness at a 5% deflection. The pipe must maintain a continuous fall to the disposal system.

(4) The pipe from the final treatment tank to a gravity disposal system shall be a minimum of five feet in length.

(5) Except for drip irrigation tubing, pipe under internal pressure within any part of an on-site sewage facility system shall meet the minimum requirements of ASTM Schedule 40.

(6) Pipe that crosses drainage easements shall be sleeved with ASTM Schedule 40 pipe; the pipes shall be buried at least one foot below the surface, or buried less than one foot and encased in concrete; the outside pipe shall have locater tape attached to the pipe; and markers shall be placed at the easement boundaries to indicate the location of the pipe crossing. Crossings shall be designed and constructed in a manner that protects the pipe and the drainage way from erosion.

(b) Standard disposal systems. Acceptable standard disposal methods shall consist of a drainfield to disperse the effluent either into adjacent soil (absorptive) or into the surrounding air through evapotranspiration (evaporation and transpiration).

(1) Absorptive drainfield. An absorptive drainfield shall only be used in suitable soil. There shall be two feet of suitable soil from the bottom of the excavation to either a restrictive horizon or to groundwater.

(A) Excavation. The excavation must be made in suitable soils as described in §285.31(b) of this title (relating to Selection Criteria for Treatment and Disposal Systems).

(i) The excavation shall be at least 18 inches deep but shall not exceed a depth of either three feet or six inches below the soil freeze depth, whichever is deeper. Single excavations shall not exceed 150 feet.

(ii) In areas of the state where annual precipitation is less than 26 inches per year (as identified in the Climatic Atlas of Texas, (1983) published by the Texas Department of Water Resources or other standards approved by the executive director), the maximum permissible excavation depth shall be five feet.

(iii) Multiple excavations must be separated horizontally by at least three feet of undisturbed soil. The sidewalls and bottom of the excavation must be scarified as needed. When there are multiple excavations, it is recommended that the ends be looped together.

(iv) The bottom of the excavation shall be not less than 18 inches in width.

(v) The bottom of the excavation shall be level to within one inch over each 25 feet of excavation or within three inches over the entire excavation, whichever is less.

(vi) If the borings or backhoe pits excavated during the site evaluation encounter a rock horizon and the site evaluation shows that there is both suitable soil from the bottom of the rock horizon to two feet below the bottom of the proposed excavation and no groundwater anywhere within two feet of the bottom of the proposed excavation, a standard subsurface disposal system may be used, providing the following are met.

(I) The depth of the excavation shall comply with clause (i) of this subparagraph.

(II) The rock horizon shall be at least six inches above the bottom of the excavation.

(III) Surface runoff shall be prevented from flowing over the disposal area.

(IV) Subsurface flow along the top of the rock horizon shall be prevented from flowing into the excavation.

(V) The sidewall area will not be counted toward the required absorptive area.

(VI) The formulas in clause (vii)(I) - (III) of this subparagraph shall be adjusted so that no credit is given for sidewall area.

(VII) No single pipe drainfields on sloping ground as shown in §285.90(5) of this title (relating to Figures) or no systems using serial loading shall be used.

(vii) The size of the excavation shall be calculated using data from §285.91(1) and (3) of this title (relating to Tables). The soil application rate is based on the most restrictive horizon along the media, or within two feet below the bottom of the excavation. The formula A = Q/Ra shall be used to determine the total absorptive area where:
Figure: 30 TAC §285.33(b)(1)(A)(vii) (No change.)

(I) The absorptive area shall be calculated by adding the bottom area (L x W) of the excavation to the total absorptive area along the excavated perimeter 2(L+W), (in feet) multiplied by one foot.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(I) (No change.)

(II) The length of the excavation may be determined as follows when the area and width are known.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(II) (No change.)

(III) For excavations three feet wide or less, use the following formula, or §285.91(8) of this title to determine L.
Figure: 30 TAC §285.33(b)(1)(A)(vii)(III) (No change.)

(B) Media. The media shall consist of clean, washed and graded gravel, broken concrete, rock, crushed stone, chipped tires, or similar aggregate that is generally one uniform size and approved by the executive director. The size of the media must range from 0.75 - 2.0 inches as measured along its greatest dimension except as noted in clause (i) of this subparagraph.

(i) If chipped tires are used:

(I) a geotextile fabric heavier than specified in subparagraph (E) of this paragraph must be used; and

(II) the size of the chipped tires must not exceed three inches as measured along their greatest dimension.

(ii) Soft media such as oyster shell and soft limestone shall not be used.

(C) Drainline. The drainline shall be constructed of perforated distribution pipe and fittings in compliance with any one of the following specifications:

(i) three- or four-inch diameter PVC pipe with an SDR of 35 or stronger;

(ii) four-inch diameter corrugated polyethylene, ASTM F405 in rigid ten foot joints;

(iii) three- or four-inch diameter polyethylene smoothwall, ASTM F810;

(iv) three- or four-inch diameter PVC ASTM D2729 pipe;

(v) three- or four-inch diameter polyethylene ASTM F892 corrugated pipe with a smoothwall interior and fittings; or

(vi) any other pipe approved by the executive director.

(D) Drainline installation requirements. The drainline shall be placed in the media with at least six inches of media between the bottom of the excavation and the bottom of the drainline. The drainline shall be completely covered by the media and the drainline perforations shall be below the horizontal center line of the pipe. For typical drainfield configurations, see §285.90(5) of this title. For excavations greater than four feet in width, the maximum distance between parallel drainlines shall be four feet (center to center). Multiple drainlines shall be manifolded together with solid or perforated pipe. Additionally, the ends of the multiple drainlines opposite the manifolded end shall either be manifolded together with a solid line, looped together using a perforated pipe and media, or capped.

(E) Permeable soil barrier. Geotextile fabric shall be used as the permeable soil barrier and shall be placed between the top of the media and the excavation backfill. Geotextile fabric shall conform to the following specifications for unwoven, spun-bounded polypropylene, polyester, or nylon filter wrap.
Figure: 30 TAC §285.33(b)(1)(E) (No change.)

(F) Backfilling. Only Class Ib, II, or III soils as described in §285.30 of this title (relating to Site Evaluation) shall be used for backfill. Class Ia and IV soils are specifically prohibited for use as a backfill material. The backfill material shall be mounded over the excavated area so that the center of the backfilled area slopes down to the outer perimeter of the excavated area to allow for settling. Surface runoff impacting the disposal area is not permitted and the diversion method shall be addressed during development of the planning materials.

(G) Drainfields on irregular terrain. Where the ground slope is greater than 15% but less than 30%, a multiple line drainfield may be constructed along descending contours as shown in §285.90(5) of this title. An overflow line shall be provided from the upper excavations to the lower excavations. The overflow line shall be constructed from solid pipe with an SDR of 35 or stronger, and the excavation carrying the overflow pipe shall be backfilled with soil only.

(H) Drainfield plans. A number of sketches, specifications, and details for drainfield construction are provided in §285.90(4) and (5) of this title.

(2) Evapotranspirative (ET) system. An ET system may be used in soils which are classified as unsuitable for standard subsurface absorption systems according to §285.31(b) of this title with respect to texture, restrictive horizons, or groundwater. Water saving devices must be used if an ET system is to be installed. ET systems shall only be used in areas of the state where the annual average evaporation exceeds the annual rainfall. Evaporation data is provided in §285.91(7) of this title.

(A) Liners. An impervious liner shall be used between the excavated surface and the ET system in all Class Ia soils, where seasonal groundwater tables penetrate the excavation, and where a minimum of two feet of suitable soil does not exist between the excavated surface and either a restrictive horizon or groundwater. Liners shall be rubber, plastic, reinforced concrete, gunite, or compacted clay (one foot thick or more). If the liner is rubber or plastic, it must be impervious, and each layer must be at least 20 mils thick. Rubber or plastic liners must be protected from exposed rocks and stones by covering the excavated surface with a uniform sand cushion at least four inches thick. Clay liners shall have a permeability of 10 -7 centimeters/second or less, as tested by a certified soil laboratory.

(B) ET system sizing. The following formula shall be used to calculate the top surface area of an ET system.
Figure: 30 TAC §285.33(b)(2)(B) (No change.)

(C) The owner of the ET system shall be advised by the person preparing the planning materials of the limits placed on the system by the Q selected. If the Q is less than required by §285.91(3) of this title, the flow rate shall be included as a condition to the permit, and stated in an affidavit properly filed and recorded in the deed records of the county as specified in §285.3(b)(3) of this title (relating to General Requirements).

(D) Backfill material. Backfill material shall consist of Class II soil as described in §285.30 of this title. All drainlines must be surrounded by a minimum of one foot of media. Backfill shall be used to fill the excavation between the media to allow the backfill material to contact the bottom of the excavation.

(E) Vegetative cover for transpiration. The final grade shall be covered with vegetation fully capable of taking maximum advantage of transpiration. Evergreen bushes with shallow root systems may be planted in the disposal area to assist in water uptake. Grasses with dormant periods shall be overseeded to provide year-round transpiration.

(F) ET systems. ET systems shall be divided into two or more equal excavations connected by flow control valves. One excavation may be removed from service for an extended period of time to allow it to dry out and decompose biological material which might plug the excavation. If one of the excavations is removed from service, the daily water usage must be reduced to prevent overloading of the excavation(s) still in operation. Normally, an excavation must be removed from service for two to three dry months for biological breakdown to occur.

(G) ET system plans. A number of sketches for ET system construction are provided in §285.90(4) and (5) of this title.

(3) Pumped effluent drainfield. Pumped effluent drainfields shall use the specifications for low-pressure dosed drainfields described in subsection (d)(1) of this section, with the following exceptions.

(A) Applicability. If the slope of the site is greater than 2.0%, pumped effluent drainfields shall not be used. Pumped effluent drainfields may only be used by single family dwellings.

(B) Length of distribution pipe. There shall be at least 1,000 linear feet of perforated pipe for a two bedroom single family dwelling. For each additional bedroom, there shall be an additional 400 linear feet of perforated pipe. No individual distribution line shall exceed 70 feet in length from the header.

(C) Excavation width and horizontal separation. The excavated area shall be at least six inches wide. There shall be at least three feet of separation between trenches.

(D) Lateral depth and vertical separation. All drainfield laterals shall be between 18 inches and three feet deep. There shall be a minimum vertical separation distance of one foot from the bottom of the excavation to a restrictive horizon, and a minimum vertical separation of two feet from the bottom of the excavation to groundwater.

(E) Media. Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least six inches of media (pea gravel or media up to two inches measured along its greatest dimension).

(F) Pipe and hole size. The distribution (dosing) and manifold (header) pipe shall be 1.25 - 1.5 inches in diameter. The manifold may have a diameter larger than the distribution pipe, but shall not exceed 1.5 inches in diameter. Distribution (dosing) pipe holes shall be 3/16 - 1/4 inch in diameter and shall be spaced five feet apart.

(G) Pump size. Pumped effluent drainfields shall use at least a 1/2 horsepower pump.

(H) Backfilling. Only Class Ib, II, or III soils as described in §285.30(b)(1)(A) of this title shall be used for backfill.

(c) Proprietary disposal systems.

(1) Gravel-less drainfield piping. Gravel-less pipe may be used only on sites suitable for standard subsurface sewage disposal methods. Gravel-less pipe shall be eight-inch or ten-inch diameter corrugated perforated polyethylene pipe. The pipe shall be enclosed in a layer of unwoven spun-bonded polypropylene, polyester, or nylon filter wrap. Gravel-less pipe shall meet ASTM F-667 Standard Specifications for large diameter corrugated high density polyethylene (ASTM D 1248) tubing. The filter cloth must meet the same material specifications as described under subsection (b)(1)(E) of this section.

(A) Planning parameters. Gravel-less drainfield pipe may be substituted for drainline pipe in both absorptive and ET systems. When gravel-less pipe is substituted, media will not be required. ET systems shall be backfilled with Class II soils only. All other planning parameters for absorptive or ET systems apply to drainfields using gravel-less pipe.

(B) Installation. The connection from the solid line leaving the treatment tank to the gravel-less line shall be made by using an eight or ten-inch offset connector. The gravel-less line shall be laid level, the continuous stripe shall be up, and the lines shall be joined together with couplings. A filter cloth must be pulled over the joint to eliminate soil infiltration. The gravel-less pipe must be held in place during initial backfilling to prevent movement of the pipe. The end of each gravel-less line shall have an end cap and an inspection port. The inspection port shall allow for easy monitoring of the amount of sludge or suspended solids in the line, and allow the distribution lines to be back-flushed.

(C) Drainfield sizing. To determine appropriate drainfield sizing, use a drainfield width of W = 2.0 feet for an eight-inch diameter gravel-less pipe, and an excavation width of W = 2.5 for a ten-inch gravel-less pipe.
Figure: 30 TAC §285.33(c)(1)(C) (No change.)

(2) Leaching chambers. Leaching chambers are bottomless chambers that are installed in a drainfield excavation with the open bottom of the chamber in direct contact with the excavation. The ends of the chamber rows shall be linked together with non-perforated sewer pipe. The chambers shall completely cover the excavation, and adjacent chambers must be in contact with each other in such a manner that the chambers will not separate. To obtain the reduction in drainfield size allowed in subparagraph (A)(i) and (ii) of this paragraph for excavations wider than the chambers, the chambers shall be placed edge to edge.

(A) The following formulas shall be used to determine the length of an excavation using leaching chambers.

(i) The following formula is used for leaching chambers without water saving devices and the excavation is the same width as the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(i) (No change.)

(ii) The following formula is used for leaching chambers with water saving devices and the excavation is the same width as the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(ii) (No change.)

(iii) The following formula is used for leaching chambers without water saving devices and the excavation width is greater than the width of the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(iii)

(iv) The following formula is used for leaching chambers with water saving devices and the excavation width is greater than the width of the chamber.
Figure: 30 TAC §285.33(c)(2)(A)(iv)

(B) Leaching chambers shall not be used for absorptive drainfields in Class Ia or IV soils. Leaching chambers may be used instead of media in ET systems, low-pressure dosed drainfields, and soil substitution drainfields; however, the size of the drainfield shall not be reduced from the required area.

(C) Backfill covering leaching chambers shall be Class Ib, II, or III soil.

(3) Drip irrigation. Drip irrigation systems using secondary treatment may be used in all soil classes including Class IV soils. The system must be equipped with a filtering device capable of filtering particles larger than 100 microns and that meets the manufacturer's requirements.

(A) Drainfield layout. The drainfield shall consist of a matrix of small-diameter pressurized lines, buried at least six inches deep, and pressure reducing emitters spaced at a maximum of 30-inch intervals. The pressure reducing emitter shall restrict the flow of effluent to a flow rate low enough to ensure equal distribution of effluent throughout the drainfield.

(B) Effluent quality. The treatment preceding a drip irrigation system shall treat the wastewater to secondary treatment as described in §285.32(e) of this title unless the drip irrigation system has been approved by the executive director as a proprietary disposal system without the use of secondary treatment.

(C) System flushing. Systems must be equipped to flush the contents of the lines back to the pretreatment unit when intermittent flushing is used. If continuous flushing is used during the pumping cycle, the contents of the lines must be returned to the pump tank.

(D) Loading rates. Pressure reducing emitters can be used in all classes of soils using loading rates specified in §285.91(1) of this title. Pressure reducing emitters are assumed to wet four square feet

of absorptive area per emitter; however, overlapping areas shall only be counted once toward absorptive area requirements. The loading rate shall be based on the most restrictive soil horizon within one foot of the pressure reducing emitter. When solid rock is less than 12 inches below the pressure reducing emitter, the loading rate shall be based on Class IV soils.

(E) Vertical separation distance. There shall be a minimum of one foot of soil (with less than 60% gravel) between the pressure reducing emitter and groundwater and six inches between the pressure reducing emitter and solid rock, or fractured rock. For proprietary disposal systems that do not pretreat to secondary treatment, there shall be two feet of soil (with less than 30% gravel) between the groundwater and pressure reducing emitter and one foot of soil between solid rock or fractured rock and the pressure reducing emitter.

(F) Labeling or listing. All drip irrigation system devices shall either be labeled by the manufacturer as suitable for use with domestic sewage, or be on the list of approved devices maintained by the executive director according to §285.32(c)(4) of this title.

(4) Approval of proprietary disposal systems. All proprietary disposal systems, other than those described in this section, shall be approved by the executive director before they may be used. Proprietary disposal systems shall be approved by the executive director using the procedures established in §285.32(c)(4)(B) of this title.

(d) Nonstandard disposal systems. All disposal systems not described or defined in subsections (b) and (c) of this section are nonstandard disposal systems. Planning materials for nonstandard disposal systems must be developed by a professional engineer or professional sanitarian using basic engineering and scientific principles. The planning materials for paragraphs (1) - (5) of this subsection shall be submitted to the permitting authority and the permitting authority shall review and either approve or disapprove them on a case-by-case basis according to §285.5 of this title (relating to Submittal Requirements for Planning Materials). Electrical wiring for nonstandard disposal systems shall be installed according to §285.34(c) of this title (relating to Other Requirements). Upon approval of the planning materials, an authorization to construct will be issued by the permitting authority. Approval for a nonstandard disposal system is limited to the specific system described in the planning materials for the specific location. The systems identified in paragraphs (1) - (5) of this subsection must meet these requirements, in addition to the requirements identified for each specific system in this section.

(1) Low-pressure dosed drainfield. Effluent from this type of system shall be pumped, under low pressure, into a solid wall force main and then into a perforated distribution pipe installed within the drainfield area.

(A) The effluent pump in the pump tank must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that blowouts occur.

(B) A start/stop switch or timer must be included in the system to control the dosing pump. An audible and visible high water alarm, on an electric circuit separate from the pump, must be provided.

(C) Pressure dosing systems shall be installed according to either design criteria in the North Carolina State University Sea Grant College Publication UNC-S82-03 (1982) or other publications containing criteria or data on pressure dosed systems which are acceptable to the permitting authority. Additionally, the following sizing parameters are required for all low-pressure dosed drainfields and shall be used in place of the sizing parameters in the North Carolina State University Sea Grant College Publication or other acceptable publications.

(i) The low-pressure dosed drainfield area shall be sized according to the effluent loading rates in §285.91(1) of this title and the wastewater usage rates in §285.91(3) of this title. The effluent loading rate (Ra) in the formula in §285.91(1) of this title shall be based on the most restrictive horizon one foot below the bottom of the excavation. Excavated areas can be as close as three feet apart, measured center to center. All excavations shall be at least six inches wide. To determine the length of the excavation, use the following formulas, where L = excavation length, and A = absorptive area.

(I) If the media in the excavation is at least one foot deep, the length of the excavation is L = A/(w+2) where:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(II) If the media in the excavation is less than one foot deep, the length of the excavation is L = A/(w + 2H), where H = the depth of the media in feet and:

(-a-) w = the width of the excavation for excavations one foot wide or greater; or

(-b-) w = 1 for all excavations less than one foot wide.

(ii) Each dosing pipe shall be placed with the drain holes facing down and placed on top of at least six inches of media (pea gravel or media up to two inches measured along the greatest dimension).

(iii) Geotextile fabric meeting the criteria in subsection (b)(1)(E) of this section shall be placed over the media. The excavation shall be backfilled with Class Ib, II, or III soil.

(iv) There shall be a minimum of one foot of soil (with less than 30% gravel) between the bottom of the excavation and solid or fractured rock. There shall be a minimum of two feet of soil (with less than 30% gravel) between the bottom of the excavation and groundwater.

(2) Surface application systems. Surface application systems include those systems that spray treated effluent onto the ground.

(A) Acceptable surface application areas. Land acceptable for surface application shall have a flat terrain (with less than or equal to 15% slope) and shall be covered with grasses, evergreen shrubs, bushes, trees, or landscaped beds containing mixed vegetation. There shall be nothing in the surface application area within ten feet of the sprinkler which would interfere with the uniform application of the effluent. Sloped land (with greater than 15%) may be acceptable if it is properly landscaped and terraced to minimize runoff.

(B) Unacceptable surface application areas. Land that is used for growing food, gardens, orchards, or crops that may be used for human consumption, as well as unseeded bare ground, shall not be used for surface application.

(C) Technical report. A technical report shall be prepared for any system using surface application and shall be submitted with the planning materials required in §285.5(a) of this title. The technical report shall describe the operation of the entire on-site sewage facility OSSF system, and shall include construction drawings, calculations, and the system flow diagram. Proprietary aerobic systems may reference the executive director's approval list instead of furnishing construction drawings for the system.

(D) Effluent disinfection. Treated effluent must be disinfected before surface application. The effluent quality in the pump tank must meet the minimum required test results specified in §285.91(4) of this title. All new disinfection equipment shall be listed as approved dispensers or disinfection devices for wastewater systems by National Sanitation Foundation (NSF) International or by an ANSI accredited testing institution under ANSI/NSF Standard 46, or approved by the executive director. After January 1, 2016, all new disinfection equipment shall be listed as disinfection devices for wastewater systems by NSF International or by an ANSI accredited testing institution under ANSI/NSF Standard 46, or approved by the executive director. Installation of disinfection devices on new systems shall be performed by a licensed installer II. Tablet or other dry chlorinators shall use calcium hypochlorite properly labeled for wastewater disinfection. The effectiveness of the disinfection procedure will be established by monitoring either the fecal coliform count or total chlorine residual from representative effluent grab samples as directed in the testing and reporting schedule. The frequency of testing, the type of tests, and the required results are shown in §285.91(4) of this title. Replacement of disinfection devices on existing systems may be considered an emergency repair as described in §285.35 of this title (relating to Emergency Repairs) and shall be performed by either a licensed installer II, a licensed maintenance provider, or a registered maintenance technician.

(E) Minimum required application area. The minimum surface application area required shall be determined by dividing the daily usage rate (Q), established in §285.91(3) of this title, by the allowable surface application rate (Ri = effective loading rate in gallons per square foot per day) found in §285.90(1) of this title or as approved by the permitting authority.

(F) Landscaping plan. Applications for surface application disposal systems shall include a landscape plan. The landscape plan shall describe, in detail, the type of vegetation to be maintained in the disposal area. Surface application systems may apply treated and disinfected effluent upon areas with existing vegetation. If any ground within the proposed surface application area does not have vegetation, that bare area shall be seeded or covered with sod before system start-up. The vegetation shall be capable of growth, before system start-up.

(G) Uniform application of effluent. Distribution pipes, sprinklers, and other application methods or devices must provide uniform distribution of treated effluent. The application rate must be adjusted so that there is no runoff.

(i) Sprinkler criteria. The maximum inlet pressure for sprinklers shall be 40 pounds per square inch. Low angle nozzles (15 degrees or less in trajectory) shall be used in the sprinklers to keep the spray stream low and reduce aerosols. If the separation distance between the property line and the edge of the surface application area is less than 20 feet, sprinkler operation shall be controlled by commercial irrigation timers set to spray between midnight and 5:00 a.m.

(ii) Planning criteria. Circular spray patterns may overlap to cover all irrigated area including rectangular shapes. The overlapped area will be counted only once toward the total application area. For large systems, multiple sprinkler heads are preferred to single gun delivery systems.

(iii) Effluent storage and pumping requirements.

(I) For systems controlled by a commercial irrigation timer and required to spray between midnight and 5:00 a.m., there shall be at least one day of storage between the alarm-on level and the pump-on level, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(II) For systems not controlled by a commercial irrigation timer, the minimum dosing volume shall be at least one-half the daily flow, and a storage volume of one-third the daily flow between the alarm-on level and the inlet to the pump tank.

(III) Pump tank construction and installation shall be according to §285.34(b) of this title.

(iv) Distribution piping. Distribution piping shall be installed below the ground surface and hose bibs shall not be connected to the distribution piping. An unthreaded sampling port shall be provided in the treated effluent line in the pump tank.

(v) Color coding of distribution system. All new distribution piping, fittings, valve box covers, and sprinkler tops shall be permanently colored purple to identify the system as a reclaimed water system according to Chapter 210 of this title (relating to Use of Reclaimed Water).

(3) Mound drainfields. A mound drainfield is an absorptive drainfield constructed above the native soil surface. The mound consists of a distribution area installed within fill material placed on the native soil surface. The required area of the fill material is a function of the texture of the native soil surface, the depth of the native soil, basal area sizing considerations, and sideslope requirements. A description of mound construction, as well as construction requirements not addressed in this section can be found in the North Carolina State University Sea Grant College Publication UNC-SG-82-04 (1982).

(A) A mound drainfield shall only be installed at a site where there is at least one foot of native soil; however, approval for installation on sites with less than one foot of native soil may be granted by the permitting authority on a case-by-case basis.

(B) Mounds and mound distribution systems must be constructed with the longest dimension parallel to the contour of the site.

(C) Soil classification, loading rates (R(a)), and wastewater usage rates (Q) shall all be obtained from this chapter.

(D) The depth of soil material (with less than 30% gravel) between the bottom of the media and a restrictive horizon must be at least 1.5 feet to the restrictive horizon or two feet to groundwater. The soil material includes both the fill and the native soil.

(E) The distribution area is defined as the interface area between the media containing the distribution piping and the fill material or the native soil, if applicable. The distribution length is the dimension parallel with the contour and equivalent to the length of the distribution media which must also run parallel with the contour. The distribution lines within the distribution media must extend to 12 inches of the end of the distribution media. The distribution width is defined as the distribution area divided by the distribution length.

(i) The formula A(d) = Q/R(a) shall be used for calculating the minimum required distribution area of the mound where: Figure: 30 TAC §285.33(d)(3)(E)(i) (No change.)

(ii) The area credited toward the minimum required distribution area can be determined in either of the following ways.

(I) If the distribution area consists of a continuous six-inch layer of media over the fill, the credited area is the bottom interface area between the media and soil beneath the media.

(II) If the distribution area consists of rows of media and distribution piping, the credited area can be calculated using the formulas listed in paragraph (1)(C)(i)(I) or (II) of this subsection depending on the depth of the media.

(iii) For sites with greater than 2% slopes and solid bedrock, saturated zones, or class IV horizons within two feet of the native soil surface, the length to width ratio of the distribution area must be at least 7:1. For sites with greater than 2% slopes and no solid bedrock, saturated zones, or class IV horizons within two feet of the native soil surface, the length to width ratio of the distribution area must be at least 4:1. No length to width ratio is required on a site with 2% slope or less.

(iv) Effluent must be pressure dosed into the distribution piping to ensure equal distribution and to control application rates.

(v) If a continuous layer of media is used, the dosing lines must not be spaced more than three feet apart. If rows of media are used, the rows may be as close as three feet apart, measured edge to edge.

(vi) The dosing holes must not be greater than three feet apart.

(F) The basal area is defined as the interface area between the native soil surface and the fill material. The formula A(b) = Q/R(a) must be used for calculating the minimum required basal area of the mound where: A(b) = minimum required basal absorptive area in square feet; Q = design wastewater usage rate in gallons per day; R(a) = application rate of the native soil surface in gallons per square foot per day.

(i) On sites with greater than 2% slope, the area credited toward the required minimum basal area is computed by multiplying the length of the distribution system by the distance from the upslope edge of the distribution system to the downslope toe of the mound.

(ii) On sites with 2% slopes or less, the area credited toward the minimum required basal area sizing includes all areas below the distribution system as well as the side slope area on all side slope areas greater than six inches deep.

(G) Mounds shall only be installed on sites with less than 10% slope.

(H) The toe of the mound is considered the edge of the soil absorption system.

(I) The side slopes must be no steeper than three to one.

(J) There must be at least six inches of backfill over the distribution media and the mound shall be crowned to shed water.

(4) Soil substitution drainfields. Soil substitution drainfields may be constructed in Class Ia soils, highly permeable fractured rock, highly permeable fissured rock, or Class II and III soils with greater than 30% gravel.

(A) A soil substitution drainfield must not be used in Class IV soils or Class IV soils with greater than 30% gravel. Class III or IV soil shall not be used as the substituted soil in a soil substitution drainfield. There must be at least two feet of substituted soil between the bottom of the media and groundwater.

(B) A soil substitution drainfield is constructed similar to a standard absorptive drainfield except that a minimum two foot thick Class Ib or Class II soil buffer shall be placed below and on all sides of the drainfield excavation. The soil buffer must extend at least to the top of the media. The two-foot buffer area along the sides of the excavation is not credited as bottom area in calculating absorptive area. However, the interface between the media and the substituted soil is credited as absorptive area.

(C) Soil substitution drainfields must be designed to address soil compaction to prevent unlevel disposal. It is recommended that low-pressure dosing be used for effluent distribution. The edge of the substituted soil is considered the edge of the soil absorption drainfield in determining the appropriate separation distances as listed in §285.91(10) of this title.

(D) Class Ia soils do not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield may be constructed in Class Ia soils in order to provide adequate soil for treatment. Absorptive area sizing must be based on the textural class of the substituted soil and must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(E) Highly permeable fractured and fissured rock, which contains soil in the fractures and fissures, does not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield can be constructed in this permeable fractured and fissured rock in order to provide adequate soil for treatment. Absorptive area sizing must be based on the most restrictive textural class between either the native soil residing in the fractures or fissures or the substituted soil. The sizing must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(F) Class II and III soils with greater than 30% gravel do not provide adequate treatment of wastewater through soil contact. A soil substitution drainfield can be constructed in Class II or III soils with greater than 30% gravel in order to provide adequate soil for treatment. Absorptive area sizing must be based on the most restrictive textural class between either the non-gravel portion of the native soil or the substituted soil. The sizing must follow the formulas in subsection (b)(1)(A)(vii)(I) of this section.

(5) Drainfields following secondary treatment and disinfection. Subsurface drainfields following secondary treatment and disinfection may be constructed in Class Ia soils, fractured rock, fissured rock, or other conditions where insufficient soil depth will allow septic tank effluent to reach fractured rock or fissured rock, as long as the following conditions are met.

(A) Drainfield sizing.

(i) If the unsuitable feature is Class Ia soil, the disposal area sizing shall be based on the application rate for Class Ib soil. Some form of pressure distribution shall be used for effluent disposal.

(ii) If the unsuitable feature is fractured or fissured rock, the system sizing should be based on the application rate for Class III soil. Some form of pressure distribution system shall be used for effluent disposal.

(B) Effluent disinfection. Treated effluent must be disinfected as indicated in §285.32(e) of this title before discharging into the drainfield.

(C) Other requirements. The affidavit, maintenance, and testing and reporting requirements of §285.3(b)(3) of this title and §285.7(a) and (d) of this title (relating to Maintenance Requirements) apply to these systems.

(6) All other nonstandard disposal systems. The planning materials for all non-standard disposal systems not described in paragraphs (1) - (5) of this subsection shall be submitted to the executive director for review according to §285.5(b)(2) of this title before the systems can be installed.

§285.34. Other Requirements.

(a) Septic tank effluent filters. Effective 180 days after the effective date of these rules, all effluent filters that are installed in septic tanks shall be listed and approved under the National Sanitation Foun-

dation (NSF) Standard 46 (2000) or under any standard approved by the executive director.

(b) Pump tanks. Pump tanks may be necessary when the septic tank outlet is at a lower elevation than the disposal field or for systems that require pressure disposal. All requirements in §285.32(b)(1)(D) - (F) of this title (relating to Criteria for Sewage Treatment Systems) also apply to pump tanks. The pump tank shall be constructed according to the following specifications.

(1) Pump tank criteria. When effluent must be pumped to a disposal area, an appropriate pump shall be placed in a separate water-tight tank or chamber. A check valve may be required if the disposal area is above the pump tank. The pump tank shall be equipped to prevent siphoning. The tank shall be provided with an audible and visible high water alarm. If an electrical alarm is used, the power circuit for the alarm shall be separate from the power circuit for the pump. Batteries may be used for back-up power supply only. All electrical components shall be listed and labeled by Underwriters Laboratories (UL). At the discretion of the permitting authority, leak testing using water filled to the inside level of the tank lid or to the top of the riser(s) may be required.

(2) Pump tank sizing. Pump tanks shall be sized to contain one-third of a day's flow between the alarm-on level and the inlet to the pump tank. The capacity above the alarm-on level may be reduced to four hours average daily flow if the pump tank is equipped with multiple pumps. See §285.33(d)(2)(G)(iii) of this title (relating to Criteria for Effluent Disposal Systems) for sizing of pump tanks for surface application systems.

(3) Pump specifications. A single pump may be used for flows equal to or less than 1,000 gallons per day. Dual pumps are required for flows greater than 1,000 gallons per day. A dual pump system shall have the "alarm on" level below the "second pump on" level, and shall have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the "alarm on" level. All audible and visible alarms shall have a manual "silence" switch. The pump switch-gear shall be set such that each pump operates as the first pump on an alternating basis. All pumps shall be rated by the manufacturer for pumping sewage or sewage effluent.

(4) Equalization tanks. In addition to the requirements for pump tanks in this section, equalization tanks shall meet the following criteria:

(A) The equalization tank must be preceded by a pretreatment tank.

(B) If an equalization tank is serving residences, the tank shall have a volume between the pump intake level and the high water level of at least 50% of the design flow and be designed to time dose at equal intervals and equal doses throughout a 24-hour period. The tank may contain a gravity line located above the high water alarm level which allows flow to the aerobic treatment unit. The design will use no fewer than 12 doses throughout the 24-hour period.

(C) If an equalization tank is designed to equalize flows over periods longer than a 24-hour period, the tank shall be designed to time dose at equal intervals and equal doses over the flow equalization time period. The design shall have a storage between the highest wastewater flow line during the period and the high level alarm equal to at least 20% of the flow generated during peak days. The tank may contain a gravity line located above the high water alarm level which allows flow to the aerobic treatment unit.

(c) Electrical wiring. All electrical wiring shall conform to the requirements the National Electric Code (1999) or under any other standards approved by the executive director. Additionally, all external wiring shall be installed in approved, rigid, non-metallic gray code electrical conduit. The conduit shall be buried according to the requirements in the National Electrical Code and terminated at a main circuit breaker panel or sub-panel. Connections shall be in approved junction boxes. All electrical components shall have an electrical disconnect within direct vision from the place where the electrical device is being serviced. Electrical disconnects must be weatherproof (approved for outdoor use) and have maintenance lockout provisions.

(d) Grease interceptors. Grease interceptors shall be used on kitchen waste-lines from institutions, hotels, restaurants, schools with lunchrooms, and other buildings that may discharge large amounts of greases and oils to the OSSF. Grease interceptors shall be structurally equivalent to, and backfilled according to, the requirements established for septic tanks under §285.32(b)(1)(D) - (F) of this title. The interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and shall be easily accessible for cleaning. Grease interceptors shall be cleaned out periodically to prevent the discharge of grease to the disposal system. Grease interceptors shall be properly sized and installed according to the requirements of the 2000 edition of the Uniform Plumbing Code, the 1980 EPA Design Manual: Onsite Wastewater Treatment and Disposal Systems, or other prevailing code.

(e) Holding tanks. Tanks shall be constructed according to the requirements established for septic tanks under §285.32(b)(1)(D) - (E) of this title. Inlet fittings are required. No outlet fitting shall be provided. A baffle is not required. Holding tanks shall be used only on sites where other methods of sewage disposal are not feasible (these holding tank provisions do not apply to portable toilets or to an office trailer at a construction site). All holding tanks shall be equipped with an audible and visible alarm to indicate when the tank has been filled to within 75% of its rated capacity. A port with its smallest dimension being at least 12 inches shall be provided in the tank lid for inspection, cleaning, and maintenance. This port shall be accessible from the ground surface and must be easily removable and watertight.

(1) Minimum capacity. The minimum capacity of the holding tank shall be sufficient to store the estimated or calculated daily wastewater flow for a period of one week (wastewater usage rate in gallons per day x seven days).

(2) Location. Holding tanks shall be installed in an area readily accessible to a pump truck under all weather conditions, and at a location that meets the minimum distance requirements in §285.91(10) of this title (relating to Tables).

(3) Pumping requirements. A scheduled pumping contract with a waste transporter, holding a current registration with the executive director, must be provided to the permitting authority before a holding tank may be installed. Pumping records must be retained for five years.

(f) Composting toilets. Composting toilets will be approved by the executive director provided the system has been tested and certified under NSF International Standard 41 (1999) or under any other standards approved by the executive director.

(g) Condensation. If condensate lines are plumbed directly into an OSSF, the increased water volume must be accounted for (added to the usage rate) in the system planning materials.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206289
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 27, 2012
Proposal publication date: July 13, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER I. APPENDICES

30 TAC §285.90, §285.91

Statutory Authority

These amendments are adopted under Texas Water Code (TWC), §5.012, concerning Declaration of Policy; TWC, §5.013, concerning the General Jurisdiction of the Commission; TWC, §5.102, concerning General Powers; and TWC, §5.103, concerning Rules. These amendments are also adopted under Texas Health and Safety Code (THSC), §366.001, concerning Policy and Purpose; THSC, §366.011, concerning General Supervision and Authority; THSC, §366.012, concerning Rules Concerning On-Site Sewage Disposal Systems; THSC, §366.051, concerning Permits; THSC, §366.052, concerning Permit Not Required for On-Site Sewage Disposal on Certain Single Residences; THSC, §366.053, concerning Permit Application; THSC, §366.054, concerning Notice From Installer; THSC, §366.056, concerning Approval of On-Site Sewage Disposal System; THSC, §366.057, concerning Permit Issuance; THSC, §366.058, concerning Permit Fee; and THSC, §366.059, concerning Permit Fee Paid to Department of Authorized Agent.

These adopted amendments implement TWC, §§5.012, 5.013, 5.102, 5.103, and THSC, §§366.001, 366.011, 366.012, 366.051 - 366.054, and 366.056 - 366.059.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an on-site sewage facility (OSSF).

(1) Table I. Effluent Loading Requirements Based on Soil Classification.
Figure: 30 TAC §285.91(1) (No change.)

(2) Table II. Septic Tank and Aerobic Treatment Unit Sizing.
Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.
Figure: 30 TAC §285.91(3) (No change.)

(4) Table IV. Required Testing and Reporting.
Figure: 30 TAC §285.91(4) (No change.)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.
Figure: 30 TAC §285.91(5) (No change.)

(6) Table VI. USDA Soil Textural Classifications.
Figure: 30 TAC §285.91(6) (No change.)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).
Figure: 30 TAC §285.91(7) (No change.)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).
Figure: 30 TAC 285.91(8) (No change.)

(9) Table IX. OSSF System Designation.
Figure: 30 TAC §285.91(9) (No change.)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.
Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).
Figure: 30 TAC §285.91(11) (No change.)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.
Figure: 30 TAC §285.91(12) (No change.)

(13) Table XIII. Disposal and Treatment Selection Criteria.
Figure: 30 TAC §285.91(13) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206290
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: December 27, 2012
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For further information, please call: (512) 239-0779

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TITLE 34. PUBLIC FINANCE

PART 6. TEXAS MUNICIPAL RETIREMENT SYSTEM

CHAPTER 125. ACTIONS OF PARTICIPATING MUNICIPALITIES

34 TAC §125.7

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") adopts an amendment to 34 TAC §125.7, concerning Optional Additional Contributions to Benefit Accumulation Fund. The amendment, which relates to the ability of a TMRS participating municipality to make optional additional contributions to its municipal account in TMRS, is adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8438). The adopted amendment modifies subsection (a) and the section title heading and changes the term "municipal accumulation fund" to the term "benefit accumulation fund" in order to conform with the "benefit accumulation fund" terminology now used throughout Title 8, Subtitle G, Chapters 851 - 855 of the Texas Government Code (the "TMRS Act").

During the 82nd Legislative Session of the Texas Legislature, Senate Bill 350 ("SB 350") was enacted into law, which provided for the restructuring of fund obligations and accounts of TMRS. As part of such fund restructuring, the TMRS Act was amended to provide that the fund account known as the "municipality accumulation fund" was renamed the "benefit accumulation fund" and the assets and liabilities of the fund accounts formerly known as

the "employees saving fund" and the "current service annuity reserve fund" were transferred to the benefit accumulation fund as described in SB 350. To conform with such statutory changes, §125.7 is amended to replace the old statutory term "municipal accumulation fund" with the new statutory term "benefit accumulation fund".

Summary of comments: No comments were received.

Statutory Authority: The amendment is adopted pursuant to Texas Government Code §855.4065 and Texas Government Code §855.102. The Board of Trustees of TMRS interprets §855.4065 as authorizing it to adopt rules allowing participating municipalities to make optional additional contributions to be deposited in the municipality's account in the benefit accumulation fund. The Board of Trustees interprets §855.102 as authorizing it to adopt rules necessary or desirable for the efficient administration of the retirement system.

Cross-reference to Statute: The adopted amendment affects Texas Government Code §855.4065. In general, §125.7 also affects the following statutes: Texas Government Code §855.407, providing limitations on municipality contribution rates, and Texas Government Code §855.501, providing for increased current service annuities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2012.

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David Gavia
Executive Director
Texas Municipal Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 225-3754

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CHAPTER 127. MISCELLANEOUS RULES

34 TAC §127.4

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS") adopts amendments to 34 TAC §127.4, relating to Credited Service under the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). Section 127.4 is amended to revise certain provisions in compliance with the applicable provisions of USERRA and §414(u) of the Internal Revenue Code of 1986, as amended ("IRC"), as well as the Heroes Earnings Assistance and Relief Tax Act of 2008 ("HEART Act") and IRC §401(a)(37). The amendments to the rule are adopted without changes to the proposed text as published in the October 26, 2012, issue of the *Texas Register* (37 TexReg 8439). The adopted amendments modify subsection (c)(2)(C) and (E) and add new subsections (d), (e), and (f) to §127.4.

The adopted amendment to subsection (c)(2)(C) is nonsubstantive and changes the word "credit" to "deposits" to conform with terminology used throughout the section. The adopted amendment to subsection (c)(2)(E) specifies that an eligible TMRS member will be permitted to deposit employee contributions to his or her individual account that would have been made to the account during periods of confirmed uniformed service provided the deposits are either paid directly to TMRS by the eligible member or are paid by the member utilizing a rollover or transfer of funds in accordance with the provisions of 34 TAC §127.6, relating to the Acceptance of Rollovers and Transfers. The adopted amendment to subsection (c)(2)(E) also provides that the deposits shall retain the same after-tax or pre-tax characterization that the funds have when deposited with TMRS.

The adopted subsections (d), (e), and (f) specifically state certain IRC rules applicable to qualified retirement plans, in compliance with applicable provisions of the HEART Act. The additions of subsections (d), (e), and (f) amend the section to (i) effective as of January 1, 2007, provide the beneficiary of a TMRS member who dies while performing "qualified military service" with any additional benefits (other than benefit accruals related to the period of qualified military service) that would have been provided to the member had the member resumed employment and then died, (ii) expressly state that (I) for TMRS purposes, compensation includes military differential pay made by a participating municipality to a member while performing qualified military service and (II) for IRC purposes, effective January 1, 2009, a member receiving military differential pay is treated as an employee of the employer making the payment and such differential pay will be treated as compensation, and (iii) provide that the section is intended to comply with, and will be construed to be consistent with, USERRA and IRC §401(a)(37) and §414(u).

Title 8, Subtitle G, Chapters 851 - 855 of the Texas Government Code (the "TMRS Act") applies to TMRS. Texas Government Code §855.102 allows the Board to adopt rules it finds necessary or desirable for the efficient administration of TMRS. Additionally, Texas Government Code §853.506 provides that contributions, benefits, and service credit for qualified military service will be provided in accordance with IRC §414(u) and allows the Board to adopt rules that modify the terms of the TMRS Act for the purpose of compliance with USERRA. Further, Texas Government Code §855.607 provides that the TMRS Act is to be construed and administered in a manner that the TMRS retirement benefit plan will be considered a tax-qualified plan under IRC §401(a) and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan. IRC §414(u) provides special rules regarding the interaction of USERRA with the rules governing tax-qualified retirement plans. The HEART Act added IRC §401(a)(37) and §414(u)(12)(A) as additional military service related provisions applicable to tax-qualified retirement plans. The HEART Act requires that for governmental plans, such as TMRS, written plan amendments to reflect the above-described HEART Act provisions be made on or before the end of the 2012 plan year. The TMRS 2012 plan year will end on December 31, 2012.

The adopted amendments of 34 TAC §127.4 implement the authority granted to the Board in Texas Government Code §§855.102, 853.506, and 855.607 to adopt rules as described above. Pursuant to Texas Government Code §855.607, rules adopted by the Board relating to plan qualifications issues are considered a part of the plan.

Summary of comments: No comments were received.

Statutory Authority: The amendments are adopted pursuant to Texas Government Code §853.506, Texas Government Code §855.607, and Texas Government Code §855.102. The Board of Trustees of TMRS interprets §853.506 as authorizing the Board to adopt rules to modify the terms of the TMRS Act for the purpose of compliance with USERRA. The Board of Trustees inter-

prets §855.607 as authorizing it to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a tax-qualified plan. The Board of Trustees interprets §855.102 as authorizing the Board to adopt rules necessary or desirable for the efficient administration of the retirement system.

Cross-reference to Statutes: The adopted amendments implement (i) Texas Government Code §853.506, which provides that contributions, benefits, and service credits for qualified military service will be provided in accordance with IRC §414(u) and allows the Board to adopt rules that modify the terms of the TMRS Act for the purpose of compliance with USERRA, and (ii) Texas Government Code §855.607, which provides that the TMRS Act is to be construed and administered in a manner that the TMRS benefit plan will be considered a tax-qualified plan under IRC §401(a) and allows the Board to adopt rules that modify the plan to the extent the Board considers necessary for TMRS to be considered a qualified plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206319
David Gavia
Executive Director
Texas Municipal Retirement System
Effective date: December 30, 2012
Proposal publication date: October 26, 2012
For further information, please call: (512) 225-3754

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 16. OFFICE OF VIOLENT SEX OFFENDER MANAGEMENT

CHAPTER 810. CIVIL COMMITMENT

The Office of Violent Sex Offender Management (office) adopts amendments to §§810.121, 810.122, 810.151, 810.153, 810.211, 810.271 - 810.273, and 810.281 - 810.283, concerning the civil commitment of sexually violent predators. The amendments to §§810.122, 810.273, 810.281, and 810.282 are adopted with changes to the proposed text as published in the June 22, 2012, issue of the *Texas Register* (37 TexReg 4563). The amendments to §§810.121, 810.151, 810.153, 810.211, 810.271, 810.272, and 810.283 are adopted without changes, and the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are due to the statutory changes made during the 82nd Legislature, Regular Session, 2011, by the passage of Senate Bill 166, which added Government Code, Chapter 420A, for the creation of a new state agency to perform the functions relating to the sex offender civil commitment program that was performed by the Council on Sex Offender Treatment.

Sections 810.121, 810.122, 810.151 - 810.153, 810.211, 810.241, 810.242, 810.271 - 810.273, and 810.281 - 810.283 concerning the monitoring and treatment of civilly committed sex offenders were transferred from 22 Texas Administrative Code Part 36, under the Council on Sex Offender Treatment, effective September 1, 2011. The transfer notice was published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8391). The Council on Sex Offender Treatment will continue to perform its licensing functions under Occupations Code, Chapter 110.

SECTION BY SECTION SUMMARY

Section 810.121 provides clarification regarding the history concerning the civil commitment program. Section 810.122 provides for various definitional changes involving the civil commitment program. The definition of the Council on Sex Offender Treatment has been deleted, and the definition of the Office of Violent Sex Offender Management has been added. Also, the definition of the Multidisciplinary team was amended to include the Office of the Violent Sex Offender Management and revise the number of members.

Amendments to §§810.151, 810.211, and 810.271 - 810.273 change the name from the "Council on Sex Offender Treatment" to the "Office of Violent Sex Offender Management," and the term "office" replaces the term "council" to be consistent with the legislation.

The amendment to §810.153 changes the name "council" to "office," the annual compensation from $6,000 to $10,000 for a treatment provider, as mandated by law, and deletes the Department of Public Safety as the provider of tracking services.

Amendments to §§810.281 - 810.283 change the name "council" to "office" and provide that the records that are not made confidential will be maintained in separate files and not in the licensee files.

SUMMARY OF COMMENTS

The following comments were received concerning the proposed rules during the comment period. Following each comment is the office's response and any resulting changes. The commenters were representatives of State Counsel for Offenders and not against the rules in their entirety; however, they recommended changes as outlined in this summary of comments.

Comment: Concerning §810.121(b) regarding "Construction" of the rules, the commenter requested set criteria for case managers, treatment providers, and biennial experts, with guidelines for supervised housing, treatment plans, standard of care, civil commitment requirements, supervision and tracking services, commitment review procedures, petitions for release, and immunity section.

Response: The office disagreed with the request. Pursuant to Health and Safety Code, §841.141(b), the board has developed the standards of care and case management for committed persons.

Comment: Concerning §810.122(3) and (4), the commenter noted the term "council" was used in the definitions.

Response: The office agreed to the modification of §810.122(3) and (4) and replaced the term "council" with the term "office."

Comment: Concerning §810.122(6), the commenter requested clarification by adding "Multidisciplinary" to the second sentence of the definition.

Response: The office disagreed with the comment because the current language parallels the Health and Safety Code,

§841.022(b). No change was made to this definition as a result of the comment.

Comment: Concerning §810.151, regarding the administration of the Act, the commenter requested clarification by deleting "Office of Violent Sex Offender Management."

Response: The office disagreed with the comment because the current language parallels the Health and Safety Code, §841.007. No change was made as a result of the comment.

Comment: Concerning §810.151, regarding the Administration of the Act, the commenter requested deleting "the chapter" and adding "the Act."

Response: The office disagreed with the comment because the current language refers to Health and Safety Code, Chapter 841. No change was made as a result of the comment.

Comment: Concerning §810.153(2), regarding the Outpatient Treatment and Supervision Program, the commenter requested modifying the section by adding "the provision of supervision shall also include ensuring that the necessary doctor, dental, and vision appointments are made for the committed person and that transportation arrangements are made to ensure the committed person can obtain medical care. The case manager shall assist the committed person with obtaining prescription drugs and medical care regardless of indigency. The provision of supervision shall include the safe housing assignments of civilly committed individuals and supervision of medically required diets, including those for diabetics."

Response: The office disagreed with the comment because the Health and Safety Code, §841.007 delineates the statutory duties of the office as "providing appropriate and necessary treatment and supervision through the case management system" and the treatment contemplated by statute is "sex offender treatment" as defined under Occupations Code, Chapter 110 and this chapter. No changes were made to this section as a result of the comment.

Comment: Concerning §810.153(3), regarding the Outpatient Treatment and Supervision Program, the commenter requested modifying the language to add "who is civilly committed pursuant to the Act."

Response: The office disagreed with the comment because 37 TAC Chapter 810 contemplates only persons who have been civilly committed under Health and Safety Code, Chapter 841. No change was made as a result of the comment.

Comment: Concerning §810.153(4), regarding the Outpatient Treatment and Supervision Program, the commenter requested modifying the language to add "under Health and Safety Code, §571.001 et seq., Subtitle C, Title 7."

Response: The office disagreed with the comment because the current language parallels the Health and Safety Code, §841.150. No change was made as a result of the comment.

Comment: Concerning §810.153(5), regarding the Outpatient Treatment and Supervision Program, the commenter requested modifying the language to delete "periodic" and add "monthly."

Response: The office disagreed with the comment as the current language parallels the Health and Safety Code, §841.083(e)(1) - (3). No change was made was made as a result of the comment.

Comment: Concerning §810.153(5), regarding the Outpatient Treatment and Supervision Program, the commenter requested modifying the language to add "a copy of each report shall be provided to the State Counsel for Offenders."

Response: The office disagreed with the comment as the current language parallels the statutory requirements under Health and Safety Code, §841.101(b). No change was made as a result of the comment.

Comment: Concerning §810.211(a), regarding the Biennial Review, the commenter requested modifying the language to add "a licensed psychologist or psychiatrist who is not the person's treatment provider."

Response: The office disagreed with the comment as Health and Safety Code, §841.101(a) delineates that the office shall contract with an expert to perform the examination.

Comment: Concerning §810.211(b), regarding the Biennial Review, the commenter requested modifying the language to add "and the State Counsel for Offenders."

Response: The office disagreed with the comment as the current language parallels Health and Safety Code, §841.101(b). No change was made as a result of the comment.

Comment: Concerning §810.271(3), regarding Release and Exchange of Information, the commenter requested modifying the language to delete "may" and add "shall."

Response: The office disagreed with the comment as the current language parallels Health and Safety Code, §841.142(d) and would conflict with statute. No change was made as a result of the comment.

Comment: Concerning §810.271(4), regarding Release and Exchange of Information, the commenter requested modifying the language by adding "unless release of the information is otherwise protected by federal statute or if the release requires a court order" and deleting "as appropriate, regardless of whether the information is otherwise confidential and regardless of when the information was created or collected."

Response: The office disagreed with the comment as the current language parallels Health and Safety Code, §841.142(e) and would conflict with statute. No change was made as a result of the comment.

Comment: Concerning §810.273, regarding Cost of Tracking Service, the commenter requested modifying the language by adding "The person shall monthly" and delete "and monthly shall."

Response: The office disagreed with the comment as the current language parallels Health and Safety Code, §841.084. No change was made as a result of the comment.

Comment: Concerning §810.273, regarding Cost of Tracking Service, the commenter requested modifying the language by adding "the person's tracking service for the previous month according to the published Income Schedule" and deleting "service with respect to the person during the subsequent month."

Response: The office disagreed with the comment as the current language parallels Health and Safety Code, §841.084 and would conflict with statute. No change was made as a result of the comment.

Comment: Concerning §810.281, regarding Access to Criminal History Records, the commenter requested modifying the language by adding "for" and "independent contractor" and deleting "that relates to."

Response: The office disagreed with the comment as the Government Code, §411.1389, addresses persons who have applied with the office to be an employee of the office or a contracted service provider. No change was made as a result of the comment.

Comment: Concerning §810.281, regarding Access to Criminal History Records, the commenter requested modifying the language by adding "agency" and deleting "agencies."

Response: The office disagreed with the comment as using the plural tense is appropriate. No change was made as a result of the comment.

Comment: Concerning §810.281, regarding Access to Criminal History Records, the commenter requested modifying the language by adding "office" and deleting "council."

Response: The office agreed with modification of §810.281 and replaced the term "council" with the term "office."

Comment: Concerning §810.281, regarding Access to Criminal History Records, the commenter requested modifying the language by adding "the office shall not employ or contract for services with a person who has a felony conviction or deferred adjudication for a felony."

Response: The office disagreed with the modification as it is not appropriate in the promulgation of rules and is delegated in agency policies and regulatory licensing board standards. No change was made as a result of this comment.

Comment: Concerning the title of Subchapter F, Criminal Background Check of Potential Employees, the commenter requested modification to add "and independent contractors."

Response: The office disagreed with the comment as the Government Code, §411.1389, addresses persons who have applied with the office to be an employee of the office or a contracted service provider. No change was made as a result of the comment.

Comment: Concerning §810.282, regarding Criminal Background Check of Potential Employees, Records, the commenter requested modifying the language by adding "of the office relating to potential employees and independent contractors not regulated by §810.281" and deleting "of the council that are not."

Response: The office disagreed with the comment as the Government Code, §411.1389, addresses potential employees and contracted service providers, but agreed with modification of §810.282 and replaced the term "council" with the term "office."

Comment: Concerning §810.282, regarding Criminal Background Check of Potential Employees, Records, the commenter requested modifying the language by adding "the Executive Director of the office," deleting "chairperson of the office," adding "shall," deleting "are the only staff authorized to have daily," and adding "of potential employees and independent contractors."

Response: The office disagreed with the comment as the Government Code, §411.1389, addresses potential employees and contracted service providers and access to criminal background information. No change was made as a result of the comment.

Comment: Concerning §810.283, regarding Destruction of Criminal History Records, the commenter requested modifying the language by adding "an employee or independent contractor applicant's criminal history record information, conviction, and deferred adjudication" and deleting "conviction/adjudication."

Response: The office disagreed with the comment as the Government Code, §411.1389, addresses potential employees and contracted service providers and access to criminal background information. No change was made as a result of the comment.

Comment: Concerning §810.283, regarding Destruction of Criminal History Records, the commenter requested modifying the language by adding "the applicant" and deleting "a person."

Response: The office disagreed with the comment as Government Code, §411.1389, refers to the "person." No change was made as a result of the comment.

Comment: Concerning §810.283, regarding Destruction of Criminal History Records, the commenter requested modifying the language by adding "within 72 hours," "shall be deleted or destroyed within 72 hours" and deleting "will be destroyed in the aforementioned time frame."

Response: The office disagreed with the comment as the Government Code, §411.1389(c), addresses the statutory timeframe. No change was made as a result of the comment.

SUBCHAPTER A. CIVIL COMMITMENT GENERAL PROVISIONS

37 TAC §810.121, §810.122

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §841.141, which requires the office to adopt rules consistent with Health and Safety Code, Chapter 841, and which provides the office with the authority to adopt rules consistent with the purposes of the chapter.

§810.122. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Health and Safety Code, Chapter 841, Civil Commitment of Sexually Violent Predators.

(2) Behavioral abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense to the extent that the person becomes a menace to the health and safety of another person.

(3) Biennial examination expert--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(4) Case Manager--A person employed by or under contract with the office to perform duties related to outpatient treatment and supervision of a person committed under this chapter.

(5) Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager shall act as the chairperson of the team.

(6) Multidisciplinary Team (MDT)--Members of the Office of Violent Sex Offender Management (two), Council on Sex Offender Treatment (one), Texas Department of Criminal Justice (one), Texas Department of Criminal Justice-Victim Service Division (one), Texas Department of Public Safety (one), and Texas Department of State Health Services-Community Mental Health Division (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release or discharge; gives notice of its findings to the Texas Department of Criminal Justice or to the Department of State Health Ser-

vices-Community Mental Health Division; and recommends to either agency that the person be assessed for a behavioral abnormality.

(7) Office--The Office of Violent Sex Offender Management including the Governing Board (Government Code, Chapter 420A).

(8) Predatory Act--An act directed toward individuals, including family members, for the primary purpose of victimization.

(9) Sexually Violent Offense--

(A) an offense under the Penal Code, §§21.02, 21.11(a)(1), 22.011, or 22.021;

(B) an offense under the Penal Code, §20.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(C) an offense under the Penal Code, §30.02, if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraph (A) or (B) of this paragraph;

(D) an offense under Penal Code, §19.02 or §19.03, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting the offense, or subsequently during a civil commitment proceeding under Health and Safety Code, Chapter 841, Subchapter D, is determined beyond a reasonable doubt to have been based on sexually motivated conduct;

(E) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraph (A), (B), (C), or (D) of this paragraph;

(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph; or

(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph.

(10) Sexually Violent Predator (SVP)--A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 10, 2012.

TRD-201206328
Dan Powers
Chair
Office of Violent Sex Offender Management
Effective date: December 30, 2012
Proposal publication date: June 22, 2012
For further information, please call: (512) 776-6972

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SUBCHAPTER B. CIVIL COMMITMENT

37 TAC §810.151, §810.153

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §841.141, which requires the office to adopt rules consistent with Health and Safety Code, Chapter 841, and which provides the office with the authority to adopt rules consistent with the purposes of the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dan Powers
Chair
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For further information, please call: (512) 776-6972

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SUBCHAPTER C. CIVIL COMMITMENT REVIEW

37 TAC §810.211

STATUTORY AUTHORITY

The amendment is authorized under Health and Safety Code, §841.141, which requires the office to adopt rules consistent with Health and Safety Code, Chapter 841, and which provides the office with the authority to adopt rules consistent with the purposes of the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dan Powers
Chair
Office of Violent Sex Offender Management
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SUBCHAPTER E. MISCELLANEOUS PROVISIONS

37 TAC §§810.271 - 810.273

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §841.141, which requires the office to adopt rules consistent with Health and Safety Code, Chapter 841, and which provides the office with the authority to adopt rules consistent with the purposes of the chapter.

§810.273. Cost of Tracking Service.

Notwithstanding Health and Safety Code, §841.146(c), a civilly committed person who is not indigent is responsible for the cost of the tracking service required by Health and Safety Code, §841.082, and monthly shall pay to the office the amount that the office determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office immediately shall transfer the money to the appropriate service provider.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Dan Powers
Chair
Office of Violent Sex Offender Management
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SUBCHAPTER F. CRIMINAL BACKGROUND CHECK OF POTENTIAL EMPLOYEES

37 TAC §§810.281 - 810.283

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §841.141, which requires the office to adopt rules consistent with Health and Safety Code, Chapter 841, and which provides the office with the authority to adopt rules consistent with the purposes of the chapter.

§810.281. Access to Criminal History Records.

The office is authorized to obtain information from the Texas Department of Public Safety or the Federal Bureau of Investigation about a conviction or deferred adjudication that relates to an applicant seeking employment with the office. The office is authorized to obtain a criminal history record from any law enforcement agencies. The criminal history record information received under this section is for the exclusive use of the office and is privileged and confidential. The criminal history record information shall not be released or otherwise disclosed to any person or agency except on court order or with the written consent of the applicant.

§810.282. Records.

All other records of the office that are not made confidential by other law are open to inspection by the public during regular office hours. The content of the criminal background checks on each potential applicant are not public records and are confidential. Unless expressed in writing by the chairperson of the office, the executive director and the executive director's designee are the only staff authorized to have daily access to the criminal history records. These records will be maintained in separate files.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chair
Office of Violent Sex Offender Management
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 9. INTELLECTUAL DISABILITY SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER D. HOME AND COMMUNITY-BASED SERVICES (HCS) PROGRAM

40 TAC §§9.153, 9.158, 9.166, 9.170, 9.174, 9.177, 9.178, 9.188, 9.189, 9.190

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§9.153, 9.158, 9.166, 9.170, 9.174, 9.177, 9.178, 9.188, 9.189, and 9.190, concerning definitions; process for enrollment of applicants; renewal and revision of an IPC; reimbursement; certification principles: service delivery; certification principles: staff member and service provider requirements; certification principles: quality assurance; DADS approval of residences; referral to DFPS; and local authority requirements for providing service coordination in the HCS Program, in Subchapter D, Home and Community-based Services (HCS) Program, of Chapter 9, Intellectual Disability Services--Medicaid State Operating Agency Responsibilities, without changes to the proposed text as published in the October 12, 2012, issue of the *Texas Register* (37 TexReg 8162).

The amendments are adopted to implement a rule of the Board of Nursing (BON) at Texas Administrative Code, Title 22, §217.11(3), and the BON's Position Statement 15.28. This BON rule and statement provide that the performance of a nursing assessment by a registered nurse (RN) lays the foundation for the provision of nursing to a person. Thus, the amendments require that an individual in the HCS Program receive a nursing assessment before nursing tasks may be provided to the individual by a nurse or an unlicensed service provider unless one of two exceptions exists. The first exception is if nursing services are not on the proposed individual plan of care (IPC) and the individual or legally authorized representative (LAR) and selected program provider have determined that no nursing tasks will be performed by an unlicensed service provider as documented on DADS form "Nursing Task Screening Tool." This exception is included because not every individual served in the HCS program needs nursing tasks to be performed during the provision of HCS Program services. The DADS form is required to help ensure that the determinations made about the need for nursing tasks are consistent. The second exception to the requirement is if a nursing task will be performed by an unlicensed service provider and a physician has delegated the

task as a medical act under Texas Occupations Code, Chapter 157. This exception was created because under state law a physician may delegate and supervise the performance of medical acts by an unlicensed service provider and, therefore, an assessment by a nurse is not necessary.

The amendments also require that, if a physician delegates a medical act to an unlicensed service provider in accordance with Texas Occupations Code, Chapter 157, and the program provider has concerns about the health or safety of an individual in the performance of the medical act, the program provider must communicate the concern to the delegating physician and take necessary steps to ensure the health and safety of the individual. The amendments require that an RN document information from the nursing assessment to help ensure accuracy and consistency of records regarding the provision of nursing services. In addition, the amendments require an RN to provide a copy of the information documented from a nursing assessment to the service coordinator of an individual participating in the consumer directed services option so the service coordinator will be informed about nursing tasks needed by the individual. The amendments also clarify that a nurse must delegate and supervise nursing tasks performed by an unlicensed service provider in accordance with state law and rules. The amendments identify the state statute and BON rules that nurses must comply with in performing nursing services and list responsibilities under the scope of practice of an RN and licensed vocational nurse (LVN) already required by DADS; that is, that an RN or LVN may teach unlicensed service providers about specific health needs of an individual and that only an RN may develop the nursing service portion of the implementation plan and make and document decisions regarding the delegation of nursing tasks.

In addition, the amendments implement Subchapter D-1 of Chapter 161 of the Texas Human Resources Code, which allows an unlicensed person to provide administration of medication to an individual in the HCS Program without delegation or oversight of an RN if the medication meets certain requirements, the individual has been assessed by an RN to determine if the individual's health status allows for such administration, and the unlicensed person is trained by an RN or determined competent by an RN to perform the administration of medication.

Because an individual is free to decline an HCS Program service, the amendments describe the consequences of an individual refusing a nursing assessment. The consequences of a refusal are that the program provider may not provide nursing services to the individual and may not provide foster/companion care, residential support, supervised living, supported home living, respite, supported employment, or day habilitation unless an unlicensed service provider does not perform nursing tasks and the program provider determines that it can ensure the individual's health, safety, and welfare in the provision of the service. Further, to help ensure that the individual or LAR is informed about the consequences of refusing an assessment, the amendments require the program provider to give the individual or LAR and service coordinator written notification if the program provider determines that it cannot ensure the individual's health, safety, and welfare in the provision of a service and the reasons for the determination. The amendments also describe the process by which an individual's service coordinator explains the consequences of the individual's refusal of a nursing assessment. Also, to ensure that DADS is aware of instances when the program provider has determined that it cannot ensure the health, safety, and welfare in the provision of a service when the individual or LAR has refused a nursing assessment, the amendments require the program provider to notify DADS of such a determination.

The amendments require the service coordinator to notify the service planning team when the individual's person directed plan (PDP) must be reviewed and updated instead of requiring the program provider to notify the service coordinator to prompt the PDP review. This change is adopted because the initiation of the PDP review is more appropriately placed on the service coordinator who is responsible for coordinating activity regarding the PDP.

The amendments reflect DADS current practice, consistent with that in other DADS programs, that service claims in the HCS Program must be submitted within 12 months after the last day of the month in which the service component was provided.

The amendments provide examples to clarify when a conflict of interest between a staff member or service provider and an individual exists and when financial impropriety toward an individual has occurred.

The amendments also permit an HCS four-person residence to meet certain requirements of the National Fire Protection Association (NFPA) 101 Life Safety Code or requirements of the International Fire Code instead of just those of the NFPA. This option was created because many local fire safety jurisdictions inspecting four-person residences are using the International Fire Code, not the NFPA.

The amendments require program providers to compare data provided by DADS with critical incident data collected by the program provider regarding the use of restraint and identify program process improvements that will prevent the reoccurrence of restraints and improve service delivery. This new requirement is in response to recommendations made by a workgroup established by HHSC in accordance with Senate Bill 325, 79th Legislature, Regular Session, 2005. The amendments also clarify the roles of the program provider and the consumer/advocate advisory committee in reviewing information about the provider's program and identifying program process improvements.

The amendments substitute respectful person-first language for outdated terminology in response to House Bill 1481, 82nd Legislature, Regular Session, 2011; update rule cross-references affected by the amendments; and make terminology consistent.

DADS received written comments from Private Providers Association of Texas and Disability Rights Texas. A summary of the comments and the responses follows.

Comment: A commenter expressed appreciation for the collaborative process DADS used to develop the amendments.

Response: The agency acknowledges the commenter's appreciation.

Comment: Concerning §9.174(d) and (e), a commenter recommended that when an individual refuses a nursing assessment and the program provider determines that, as a result of the lack of a nursing assessment, it cannot ensure the individual's health, safety, and welfare while providing certain HCS Program services, the individual should be permitted to sign a "waiver" that absolves the program provider of the requirement to ensure the individual's health, safety, and welfare during the provision of those services.

Response: The agency declines to implement the recommended change because the HCS Program waiver application

approved by the Centers for Medicare and Medicaid Services (CMS) does not allow for an individual to assume responsibility for the individual's health, safety, and welfare.

Comment: Also concerning §9.174(d) and (e), a commenter recommended, to ensure consistency in applying the provisions across the HCS Program provider base, that the agency develop standards "regarding how to establish imminent danger to oneself." The commenter stated that such a determination should not be left to individual nurses.

Response: The agency declines to implement the recommended change because the rule does not address "imminent danger." It addresses the provider's determination that it can ensure the individual's health, safety, and welfare during the provision of HCS Program services.

Comment: Concerning §9.174(d)(2)(A), a commenter recommended that, in addition to appealing DADS denial of one or more HCS Program services as a result of an individual's refusal of a nursing assessment, an individual should be able to appeal a determination by a nurse.

Response: The agency declines to implement the recommendation because in appealing a decision to deny or terminate an HCS Program service, an individual may challenge the provider's determination that nursing tasks are required in the provision of a service and that the provider cannot ensure the individual's health, safety, and welfare.

Comment: Concerning §9.178(e)(1)(B), a commenter requested that, before adoption of the amendment permitting a four-person residence to show compliance with portions of the International Fire Code applicable to an "Institutional Group I-1 occupancy" housing more than 16 persons, DADS should research whether the adoption increases the probability of local jurisdictions creating more restrictive requirements for HCS Program providers and program participants.

Response: The agency responds that the option for an HCS Program provider to be certified in accordance with the International Fire Code was proposed because many local fire safety jurisdictions inspecting four-person residences already use the International Fire Code, not the NFPA. Therefore, the research suggested by the commenter would not be beneficial.

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 2012.

TRD-201206309
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: January 1, 2013
Proposal publication date: October 12, 2012
For further information, please call: (512) 438-4466

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §152.51, concerning Authorized Witnesses to the Execution of an Offender Sentenced to Death. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes an amendment to §152.51.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201206195
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 3, 2012

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §152.61, concerning Emergency Response to Municipal, County, State or Federal Law Enforcement Agencies and Non-Agent Private Prisons/Jails. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes an amendment to §152.61.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201206205
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 4, 2012

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §163.33, concerning Community Supervision Officers. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes amendments to §163.33.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201206206
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 4, 2012

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §163.35, concerning Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes a amendments to §163.35.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.

TRD-201206204
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 4, 2012

♦ ♦ ♦

The Texas Board of Criminal Justice files this notice of intent to review 37 TAC §163.38, concerning Sex Offender Supervision. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Criminal Justice contemporaneously proposes an amendment to §163.38.

Comments should be directed to Sharon Felfe Howell, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Sharon.Howell@tdcj.state.tx.us. Written comments

from the general public should be received within 30 days of the publication of this notice.

TRD-201206325
Sharon Felfe Howell
General Counsel
Texas Department of Criminal Justice
Filed: December 10, 2012

♦ ♦ ♦

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review 31 TAC Chapter 518, Subchapter B, §518.5, concerning Historically Underutilized Business Program, in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rule continues to exist, but an amendment is needed.

The proposed amendment is published in this issue of the *Texas Register*. The amendment is proposed to make the rule compatible with statutes and the rules of the Comptroller of Public Accounts.

As required by §2001.039 of the Texas Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rule, as proposed to be amended, continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.texas.gov, or by facsimile at (254) 773-3311.

TRD-201206326
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 10, 2012

♦ ♦ ♦

Adopted Rule Reviews

Employees Retirement System of Texas

Title 34, Part 4

Pursuant to the notice of the proposed rule review published in the August 17, 2012, issue of the *Texas Register* (37 TexReg 6331), the Employees Retirement System of Texas (ERS) reviewed 34 Texas Administrative Code (TAC) Chapter 79, concerning Social Security, pursuant to Texas Government Code §2001.039, to determine whether the reason for adopting the rules in Chapter 79 continues to exist.

No comments were received concerning the proposed review.

As a result of the review, the ERS Board of Trustees (Board) has determined that the reason for adopting the rules in 34 TAC Chapter 79 continues to exist, and therefore, the Board readopts Chapter 79.

This completes ERS' review of 34 TAC Chapter 79, concerning Social Security.

TRD-201206275
Tim Sims
Acting General Counsel
Employees Retirement System of Texas
Filed: December 6, 2012

♦ ♦ ♦

Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) has completed its review required by the Texas Government Code §2001.039 of Texas Administrative Code, Title 28, Part 2, Chapter 165, concerning Rejected Risk: Injury Prevention Services. The reviewed sections in this chapter are subsequently referred to collectively in this Notice of Adopted Review as "the sections."

The notice of proposed rule review was published in the June 15, 2012, issue of the *Texas Register* (37 TexReg 4439). As provided in this notice, the Division reviewed and considered the sections for re-adoption, revision, or repeal.

The Division considered whether the reasons for adoption of the sections continue to exist. The Division received no written comments regarding the review of the sections.

The Division has determined that the reasons for adopting the sections continue to exist and the sections are retained. Any revisions in the future will be accomplished in accordance with the Administrative Procedure Act.

This concludes and completes the Division's review of Chapter 165; the chapter will be reviewed again in the future in accordance with Texas Government Code §2001.039.

TRD-201206402
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: December 12, 2012

♦ ♦ ♦

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 TAC Chapter 9, relating to LP-Gas Safety Rules. This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

The Commission received no comments on the proposed review, which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7757).

In a separate, concurrent rulemaking, the Commission adopts some nonsubstantive amendments to various rules in Chapter 9.

Issued in Austin, Texas, on December 4, 2012.

TRD-201206261
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Filed: December 6, 2012

♦ ♦ ♦

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 TAC Chapter 13, relating to Regulations for Compressed Natural Gas (CNG). This review and re-adoption has been conducted in accordance with Texas Government

Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

The Commission received no comments on the proposed review, which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7757).

In a separate, concurrent rulemaking, the Commission adopts some nonsubstantive amendments to various rules in Chapter 13.

Issued in Austin, Texas, on December 4, 2012.

TRD-201206262
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Filed: December 6, 2012

♦ ♦ ♦

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 TAC Chapter 14, relating to Regulations for Liquefied Natural Gas (LNG). This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

The Commission received no comments on the proposed review, which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7757).

In a separate, concurrent rulemaking, the Commission adopts some nonsubstantive amendments to various rules in Chapter 14.

Issued in Austin, Texas, on December 4, 2012.

TRD-201206263
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Filed: December 6, 2012

♦ ♦ ♦

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 TAC Chapter 15, relating to Alternative Fuels Research and Education Division. This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting these rules continue to exist.

The Commission received no comments on the proposed review, which was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7758).

In a separate, concurrent rulemaking, the Commission adopts some nonsubstantive amendments to various rules in Chapter 15.

Issued in Austin, Texas, on December 4, 2012.

TRD-201206264
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Filed: December 6, 2012

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §19.300(a)

Common Name	Botanical Name
Noxious plants	
alligatorweed	*Alternanthera philoxeroides*
balloonvine	*Cardiospermum halicacabum*
Brazilian peppertree	*Schinus terebinthifolius*
broomrape	*Orobanche ramosa*
camelthorn	*Alhagi camelorum*
chinese [~~Chinese~~] tallow tree	*Triadica sebifera*
Eurasian watermilfoil	*Myriophyllum spicatum*
giant duckweed	*Spirodela oligorrhiza*
giant reed	*Arundo donax*
hedge bindweed	*Calystegia sepium*
hydrilla	*Hydrilla verticillata*
itchgrass	*Rottboellia cochinchinensis*
Japanese dodder	*Cuscuta japonica*
kudzu	*Pueraria montana* var. *lobata*
lagarosiphon	*Lagarosiphon major*
paperbark	*Melaleuca quinquenervia*
purple loosestrife	*Lythrum salicaria*
rooted waterhyacinth	*Eichhornia azurea*
saltcedar	*Tamarix* spp.
salvinia	*Salvinia* spp.
serrated tussock	*Nassella trichotoma*
torpedograss	*Panicum repens*
tropical soda apple	*Solanum viarum*
water spinach	*Ipomoea aquatica*
waterhyacinth	*Eichhornia crassipes*
waterlettuce	*Pistia stratiotes*

Invasive plants	
chinaberry	***Melia azedarach***
chinese [~~Chinese~~] tallow tree.	*Triadica sebifera*
japanese climbing fern	***Lygodium japonicum***
kudzu	*Pueraria Montana* var. *lobata*
saltcedar	*Tamarix* spp.
tropical soda apple	Solanum viarum
[~~japanese climbing fern~~]	[~~*Lygodium japonicum*~~]

Figure: 10 TAC §10.621(j)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Major property condition violations	Material Noncompliance	10	All programs	Yes
Pattern of minor property condition violations	5	3	All programs	Yes
Administrative reporting of property condition violations	0	0	HTC	Yes
Owner refused to lease to a holder of rental assistance certificate/voucher because of the status of the prospective tenant as such a holder	Material Noncompliance	10	See §10.612	Yes
Owner failed to approve and distribute an Affirmative Marketing Plan as required under §10.612 of this chapter	10	3	See §10.612	No
Development failed to comply with requirements limiting minimum income standards for Section 8 residents	10	3	See §10.612	No
Development is not available to general public	10	0	HTC	Yes
HUD or DOJ notification of possible Fair Housing Act violation	0	0	HTC	Yes
Determination of a violation under the Fair Housing Act	Material Noncompliance	10	All programs	Yes
Development is out of compliance and never expected to comply/Foreclosure	Material Noncompliance	NA correction not possible	All programs	Yes
Owner did not allow on-site monitoring review	Material Noncompliance	5	All programs	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
LURA not in effect	Material Noncompliance	5	All programs	Yes
Development failed to meet minimum set aside	20	10	HTC Bonds	Yes
No evidence of, or failure to certify to, material participation of a non-profit or HUB, if required by the Land Use Restriction Agreement	10	3	HTC	Yes
Development failed to meet additional State required rent and occupancy restrictions	10	3	All programs	No
The Development failed to provide required supportive services as promised at Application	10	3	HTC Bonds	No
The Development failed to provide housing to the elderly as promised at Application	10	3	All programs	No
Failure to provide special needs housing	10	3	All programs	No
Changes in Eligible Basis or Applicable Percentage	3	NA, No correction possible	HTC	Yes
Failure to submit part or all of the AOCR or failure to submit any other annual, monthly, or quarterly report required by the Department	10	3	All programs	Yes
Utility Allowance not calculated properly	20	10	All programs	Yes

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Owner failed to execute required lease provisions, including language required by §10.608 of this subchapter or exclude prohibited lease language	10	3	All programs	No
Failure to provide annual Housing Quality Standards inspection	10	3	HOME	NA
Development has failed to establish and maintain a reserve account in accordance with §10.405 of this chapter	Material Noncompliance	10	All programs	No
Development substantially changed the scope of services as presented at initial Application without prior Department approval	10	3	HTC	No
Failure to provide a notary public as promised at Application	10	3	HTC	No
Violations of the Unit Vacancy Rule	3	1	HTC	Yes
Casualty loss	0	0	All programs	Yes
Failure to provide pre-onsite documentation as required	10	3	All programs	No
Failure to provide amenity as required by LURA	10	3	HTC	No
Failure to pay compliance monitoring or asset management fee	10	3	HTC, TCAP, Exchange, Bond	No
Change in ownership without Department approval	30	10	All programs	No
Failure to provide Fair Housing Disclosure	10	3	All programs	No

Figure: 10 TAC §10.621(k)

Noncompliance Event	Uncorrected Points	Corrected Points	Programs	If HTC, on Form 8823?
Unit not leased to Low Income Household	5	1	All programs	Yes
Low Income Units occupied by nonqualified full-time students	3	1	HTC during the compliance period and Bond	Yes
Low Income Units used on transient basis	3	1	HTC Bond	Yes
Household income increased above the re-certification limit and an available Unit was rented to a market tenant	3	1	HTC During the compliance period Bonds HOME HTF	Yes
Gross rent exceeds the highest rent allowed under the LURA or other deed restriction	5	1	All programs	Yes
Failure to maintain or provide tenant income certification and documentation	3	1	All programs	Yes
Unit not available for rent	3	1	All programs	Yes
Failure to maintain or provide Annual Eligibility Certification	3	1	All programs	No
Development evicted or terminated the tenancy of a low income tenant for other than good cause	10	3	HTC, HOME, and NSP	Yes
Household income increased above 80 percent at recertification and Owner failed to properly determine rent	3	1	HOME	NA

Figure: 16 TAC §15.5

Railroad Commission of Texas AFRED Forms			
Form Number	**Form Title**	**Creation or Last Revision Date**	**Chapter 15 Rule Number or Other Authority**
AFRED Form 1	Odorizer's or Importer's Report of Fees Collected	Rev. 7/2012	15.55, 15.65, 15.100
AFRED Form 1A	Schedule A: Schedule of Refund Amounts	Rev. 7/2012	15.65, 15.100
AFRED Form 2	Load Exemption: Certificate of LPG Destined for Export	Rev. 7/2012	15.60
AFRED Form 3	Fee on Delivery of Odorized LPG: Refund Request to Commission	Rev. 7/2012	15.70, 15.100
AFRED Form 4	Blanket Exemption	Rev. 7/2012	15.60
AFRED Form 5	Refund Request to Odorizer or Importer	Rev. 7/2012	15.65, 15.100
AFRED Form 6	Odorizer or Importer Registration	Rev. 7/2012	15.45, 15.100
AFRED Form 6A	Odorizer or Importer Designation of Agent	Rev. 7/2012	15.45, 15.100
CR-1	Propane Water Heater Rebate Application	Rev. 7/2012	15.125(a)
CR-2	Propane Star/Superstar Home Rebate Application	Rev. 7/2012	15.125(a)
CR-3	Dealer Rebate Assignment Form	Rev. 7/2012	15.150
CR-4	Propane Safety Check for Residential Customers	Rev. 7/2012	15.125(a)

Figure: 30 TAC §285.33(c)(2)(A)(iii)

$L = (0.6A-2W)/(W+2)$

Where:

A = minimum absorptive area calculated with no flow reduction; and

W = width of excavation

Figure: 30 TAC §285.33(c)(2)(A)(iv)

$L = (0.75A-2W)/(W+2)$

Where:

A = minimum absorptive area calculated with no flow reduction; and

W = width of excavation

Figure: 30 TAC §285.91(2)

SEPTIC TANK MINIMUM LIQUID CAPACITY

A. Determine the applicable wastewater usage rate (Q) in TABLE III of 30 TAC Chapter 285.

B. Calculate the minimum septic tank volume (V) as follows:

1. For Q equal to or less than 250 gal/day:
V = 750 gallons

2. For Q greater than or equal to 251 gal/day but less than or equal to 350 gal/day:
V = 1000 gallons

3. For Q greater than or equal to 351 gal/day but less than or equal to 500 gal/day:
V = 1250 gallons

4. For Q greater than or equal to 501 gal/day but less than or equal to 1000 gal/day:
V = 2.5 Q

5. For Q greater than or equal to 1001 gal/day:
V= 1,750 + 0.75Q

AEROBIC TREATMENT UNIT SIZING FOR SINGLE FAMILY RESIDENCES, COMBINED FLOWS FROM SINGLE FAMILY RESIDENCES, OR MULTI-UNIT RESIDENTIAL DEVELOPMENTS

Number of bedrooms/living area of home	Minimum Aerobic Tank Treatment Capacity (gallons per day per residential unit)
Three bedrooms and < 2,501 sq. ft. or Less than three bedrooms and 1,500 < sq. ft. < 2,501	360
Four bedrooms and < 3,501 sq. ft. or Less than four bedrooms and 2,500 < sq. ft. < 3,501	480
Five bedrooms and < 4,501 sq. ft. or Less than five bedrooms and 3,500 < sq. ft. < 4,501	600
Six bedrooms and < 5,501 sq. ft. or Less than six bedrooms and 4,500 < sq. ft. < 5,501	720
Seven bedrooms and < 7,001 sq. ft. or Less than seven bedrooms and 5,500 < sq. ft. < 7,001	840
Eight bedrooms and < 8,501 sq. ft. or Less than eight bedrooms and 7,000 < sq. ft. < 8501	960

Nine bedrooms and < 10,001 sq. ft. or Less than nine bedrooms and 8,500 < sq. ft. < 10,001	1,080
Ten bedrooms and < 11,501 sq. ft. or Less than ten bedrooms and 10,000 < sq. ft. < 11,501	1,200
For each additional bedroom above ten or 1,500 additional square feet of living area above 11,500	120

Figure: 30 TAC §285.91(10)

Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

	TO					
FROM	Tanks	Soil Absorption Systems, & Unlined ET Beds	Lined Evapotranspiration Beds	Sewer Pipe With Watertight Joints	Surface Application (Edge of Spray Area)	Drip Irrigation
Public Water Wells[2]	50	150	150	50	150	150
Public Water Supply Lines[2]	10	10	10	10	10	10
Wells and Underground Cisterns	50	100	50	20	100	100
Private Water Line	10	10	5	10[5] except at connection to structure	No separation distances	10
Wells Completed in accordance with 16 TAC §76.1000(a)(1)	50	50	50	20	50	50
Streams, Ponds, Lakes, Rivers, Creeks (Measured From Normal Pool Elevation and Water Level); Salt Water Bodies	50	75 LPD with secondary treatment & disinfection - 50	50	20	50	25 when $R_a < 0.1$ 75 when $R_a > 0.1$ (With Secondary Treatment & Disinfection - 50)

(High Tide Only): Retention Ponds/Basin (Spillway elevation)						
Foundations, Buildings, Surface Improvements, Property Lines, Swimming Pools, and Other Structures	5	5	5	5 Pipe may run beneath driveways and sidewalks or up to surface improvements if it is Schedule 80 pipe or sleeved in Schedule 40 pipe Pipe containing secondary effluent has no setbacks from building foundations	No Separation Distances Except: Property lines - 20[6] Swimming Pools - 25	No Separation Distances Except[4]: Property Lines - 5
Underground Easements	1	1	1	1	May spray to edge of easement, but not into. Sprinkler heads must be 1 feet from easement edge	1
Overhead Easements	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder	1 No setbacks if permission is granted by easement holder

Slopes Where Seeps may Occur and detention ponds	5	25	5	10	10	10 when $R_a < 0.1$ 25 when $R_a > 0.1$
Edwards Aquifer Recharge Features (See Chapter 213 of this title relating to Edwards Aquifer)[3]	50	150	50	50	150	100 when $R_a < 0.1$ 150 when $R_a > 0.1$

1. All distances measured in feet, unless otherwise indicated.
2. For additional information or revisions to these separation distances, see Chapter 290 of this title (relating to Public Drinking Water).
3. No on-site sewage facility may be installed closer than 75 feet from the banks of the Nueces, Dry Frio, Frio, or Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone.
4. Drip irrigation lines may not be placed under foundations.
5. Private water line/wastewater line crossings should be treated as public water line crossings, see Chapter 290 of this title.
6. Separation distance may be reduced to 10 feet when sprinkler operation is controlled by commercial timer. See §285.33(d)(2)(G)(i) of this title (relating to Criteria for Effluent Disposal Systems).

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

The Texas State Affordable Housing Corporation (Corporation) hereby gives notice regarding the reissuance of a Request for Proposals (RFP) for Financial Advisor Services. A copy of the RFP can be found on the Corporation's website at www.tsahc.org.

The deadline for submitting responses to this RFP is 5:00 p.m. on Monday, January 7, 2013. Responses may be emailed or mailed, however faxed responses will not be accepted. For questions or comments, please contact David Danenfelzer at (512) 477-3562 or by email at ddanenfelzer@tsahc.org.

TRD-201206386
David Long
President
Texas State Affordable Housing Corporation
Filed: December 11, 2012

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Texas Department of Agriculture

Request for Proposals: Fiscal Year 2013 Medicare Rural Hospital Flexibility Program, Rural Health Planning/Assessment Grant Program

The Texas Department of Agriculture (TDA) is accepting proposals for the Rural Health Planning/Assessment Grant Program (Program). The Program is designed to fund strategic/business planning activities to improve the financial and/or operational performance for Critical Access Hospitals (CAHs). Proposals must be received by TDA by the close of business (5:00 p.m. CST) on Monday, January 21, 2013.

Funding Parameters. Grant funds awarded may be used **only** to pay for the actual cost of a study, service or assessment. No other uses of the grant funds are permitted, including costs incurred for "in-house" work performed by any staff or representative of the recipient facility. Selected proposals will receive funding on a **cost reimbursement** basis. Funds will not be advanced to grantees.

Eligibility. Only Texas CAHs are eligible to apply for funds for strategic/business planning activities and assessments.

Submitting an Application. Applications are currently being accepted, and must be submitted on the form provided by TDA by the submission deadline. Application and guidance documents are available on TDA's website at: http://www.texasagriculture.gov/GrantsServices/RuralEconomicDevelopment/StateOfficeofRuralHealth/RuralHealthGrants.aspx, or upon request from TDA by calling (512) 463-9905.

Applications must be complete and have all required documentation to be considered. TDA reserves the right to request additional information or documentation to determine eligibility. Applications must be signed by an authorized representative.

Applications may be submitted by mail or hand-delivered to TDA headquarters in Austin, Texas. If mailing the application, make sure it is properly marked.

Deadline for Submission of Responses. A complete, hard copy application with signature must be received by TDA by the close of business **(5:00 p.m. CST) on Monday, January 21, 2013.** *See mailing information below.*

Complete applications with signature must be submitted to:

Mailing Address: Texas Department of Agriculture, State Office of Rural Health, P.O. Box 12847, Austin, Texas 78711.

Or (for overnight delivery):

Street Address: Texas Department of Agriculture, State Office of Rural Health, 1700 N. Congress, 11th Floor, Austin, Texas 78701.

TDA will send an acknowledgement of receipt by email indicating the response was received.

Assistance and Questions. For questions regarding submission of the proposal and TDA documentation requirements, please contact Megan Cody, FLEX Program Coordinator, at (512) 463-9905 or by email at Megan.Cody@TexasAgriculture.gov.

Texas Public Information Act. Once submitted, all applications shall be deemed to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-201206430
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: December 12, 2012

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Department of Assistive and Rehabilitative Services

Correction of Error

The Department of Assistive and Rehabilitative Services (DARS) adopted amendments to 40 TAC §101.907 and §101.1107 in the December 14, 2012, issue of the *Texas Register* (37 TexReg 9785). The amendments were adopted without changes; however, two non-substantive changes to references were included in the rule text. For that reason, the amended sections should have been adopted with changes and republished.

In §101.907(a)(1), the phrase "(relating to Division for Blind Services and Division for Rehabilitation Services)" was omitted. The complete paragraph should read as follows:

"(1) Under Division 2 of this subchapter (relating to Division for Blind Services and Division for Rehabilitation Services), an applicant or eligible individual who is dissatisfied with a DARS determination made by staff of DARS that affects the provision of vocational rehabilitation services may request a review of the determination."

In §101.1107(a), the phrase "This Division 3" should have been "This division". The complete subsection should read as follows:

"(a) Applicability. This division applies only to hearings which involve the identification, evaluation, placement, or provision of appropriate early intervention services to a child and the child's family under Early Childhood Intervention. This process is also referred to as the due process complaint process or due process hearing process."

The amendments take effect December 31, 2012.

TRD-201206373

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Office of the Attorney General

Notice of Settlement of a Texas Water Code Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code.

Case Title and Court: *State of Texas v. Farah Chaudhry,* Cause No. D-1-GV-12-000809, in the 419th Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant owns a former convenience store and gas station, and is the registered owner of underground storage tanks (USTs) located in Nacogdoches County, Texas. Claims settled include allegations that Farah Chaudhry failed to permanently remove the USTs from service, in violation of Texas statutes and rules, and an administrative order issued by the Texas Commission on Environmental Quality (TCEQ).

Proposed Agreed Judgment: The Agreed Final Judgment orders Farah Chaudhry to pay $12,600 in civil penalties and $3,300 in attorney's fees to the State of Texas, and costs of court.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Heather D. Hunziker, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, phone (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201206360
Katherine Cary
General Counsel
Office of the Attorney General
Filed: December 11, 2012

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Cancer Prevention and Research Institute of Texas

Request for Applications

Company Relocation Award - C-13-RELO-3

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from existing oncology-focused companies or limited partnerships that are willing to relocate to Texas for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Relocation Award is to attract industry partners in the field of cancer care to advance economic development and cancer care efforts in the State by recruiting to Texas companies with proven management teams who are focused on exceptional product opportunities to improve cancer care. CPRIT expects outcomes of supported activities to directly and indirectly benefit subsequent cancer research efforts, cancer public health policy, or the continuum of cancer care--from prevention to treatment and cure. To fulfill this vision, applications may address any product development topic or issue related to cancer biology, causation, prevention, detection or screening, treatment, or cure. The overall goal of this award program is to improve outcomes of patients with cancer by increasing the availability of Food and Drug Administration (FDA)-approved therapeutic interventions with a primary focus on Texas-centric programs. Eligible products or services include, but are not limited to, therapeutics *(e.g.,* small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the award, company applicants must presently be based outside Texas and must have already received at least one round of professional institutional investment *(e.g.,* Series A financing). In addition, award recipients must commit to headquarters or substantial business functions of the company in Texas; personnel sufficient to operate the Texas-based research and/or development activities of the company, along with appropriate management, relocated to or hired from within Texas; and use of Texas-based subcontractors and suppliers unless adequate justification is provided for the use of out-of-State entities. This is a 3-year funding program with an opportunity for renewal after the term expires. Financial support will be awarded based upon the breadth and nature of the development program proposed. While requested funds must be well justified, no maximum is set on the amount that may be requested. Funding will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on December 13, 2012 through 3:00 p.m. Central Time on, January 17, 2013, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201206318
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 10, 2012

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Request for Applications

Company Commercialization Award - C-13-COMP-3

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Commercialization Award is to finance the development of innovative products, services, and infrastructure with significant potential impact on patient care. These investments will provide companies or limited partnerships located and headquartered in Texas, or those that are willing to relocate to Texas, with the opportunity to further the development of new products for the diagnosis, treatment, or prevention of cancer; to establish infrastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. This award is intended to support companies that will be staffed with a majority of Texas-based employees, including C-level executives. The long-term objective of this award is to support commercially oriented therapeutic and medical technology products, diagnostic--or treatment-oriented information technology products, diagnostics, tools, services, and infrastructure projects. Eligible products or services include, but are not limited to, therapeutics *(e.g.,* small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the three (3) year funding award, company applicants must have already received at least one round of professional institutional investment and must have or must commit to headquartering and registration in Texas; the majority of staff residing in or relocated to Texas; and use of Texas-based subcontractors and suppliers, unless adequate justification is provided for the use of out-of-State entities. No maximum is set on the amount of funding that can be requested. Funding will be tranched and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on December 13, 2012 through 3:00 p.m. Central Time on January 17, 2013, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201206321
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 10, 2012

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Request for Applications

Company Formation Award - C-13-FORM-3

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Formation Award is to support the formation and establishment of new start-up companies in Texas that will develop products to significantly impact cancer care. These companies must be Texas-based or be willing to relocate to and remain in Texas for a specified period upon funding. Eligible products or services include, but are not limited to, therapeutics *(e.g.,* small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the award, company applicants must be early-stage start-up companies with no previous rounds of professional institutional investment *(i.e.,* those that have not yet received Series A financing). Successful applicants must commit to headquarters or substantial business functions of the company in Texas; personnel sufficient to operate the Texas-based research and/or development activities of the company, along with appropriate management, relocated to or hired from within Texas. This is a 3-year funding program with an opportunity for renewal after the term expires. No maximum is set on the amount of funding that can be requested. Funding will be tranched and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on December 13, 2012 through 3:00 p.m. Central Time on January 17, 2013, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201206322
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: December 10, 2012

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Comptroller of Public Accounts

Local Sales Tax Rate Change Notice Effective January 1, 2013

The one percent local sales and use tax will become effective January 1, 2013 in the city listed below.

CITY NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Staples (Guadalupe Co)	2094105	.010000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporation will be reduced to 3/8 percent and the adoption of an additional 1/8 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective January 1, 2013 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Marshall (Harrison Co)	2102016	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 504 of the Texas Local Government Code, Type A Corporations (4A) will be abolished effective December 31, 2012. The adoption of an additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Chapter 505 of the Texas Local Government Code Type B Corporations (4B) will become effective January 1, 2013 in the city listed below. There will be no change in the local rate or total rate.

CITY NAME	LOCAL CODE	LOCAL RATE	TOTAL RATE
Clarksville (Red River Co)	2194015	.015000	.082500

A 1/4 percent special purpose district sales and use tax will become effective January 1, 2013 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Paducah Municipal Development District	5051507	.002500	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective January 1, 2013 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Staples Municipal Development District	5094506	.005000	SEE NOTE 2

A one percent special purpose district sales and use tax will become effective January 1, 2013 in the special purpose district listed below.

SPD NAME	LOCAL CODE	NEW RATE	TOTAL RATE
Harris Co. Emergency Services Dist. No.15	5101856	.010000	SEE NOTE 3

NOTE 1: The Paducah Municipal Development District has the same boundaries as the city of Paducah. Contact the district representative at (806) 492-3713 for additional boundary information.

NOTE 2: The Staples Municipal Development District is located entirely in Guadalupe County. The boundaries of the district are the same as the boundaries for the extra-territorial jurisdiction (ETJ) area for the city of Staples excluding any area of the ETJ that falls inside Caldwell County. The city of Staples, located entirely in Guadalupe County, is entirely inside the district. The district is partially located in ZIP Codes 78670, 78655 and 78638. Contact the district representative at (512) 357-9981 for additional boundary information.

NOTE 3: The Harris County Emergency Services District No.15 is located in the northwest-central portion of Harris County. The district is located entirely within the Houston MTA, which has a transit sales and use tax. The district's boundaries for the imposition of sales and use tax exclude areas of the district which are responsible for collecting and remitting sales and use tax to the city of Houston due to a strategic partnership agreement between a utility district and the city of Houston and exclude any area within the boundaries of the city of Tomball. The unincorporated areas of Harris County in ZIP Codes 77337, 77375, 77377 and 77429 are partially located in the district. Contact the district representative at (713) 984-8222 for additional boundary information.

TRD-201206374
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: December 11, 2012

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Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of award for fiscal note consulting services under Request for Proposals (RFP) 204a. The RFP was published in the September 21, 2012, issue of the *Texas Register* (37 TexReg 7505).

The contract was awarded to Tim S. Wooten, 409 Wilson Ranch Road, Cypress Mill, Texas 78663. The total amount of the contract is not to exceed $66,000.00. The term of the contract is December 5, 2012, through August 31, 2013, with option to renew for one additional one-year term.

TRD-201206265
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 6, 2012

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Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of award for financial advisor services under Request for Proposals (RFP) 205a. The RFP was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7776).

Two (2) contracts were awarded to the following:

1. First Southwest Company, 300 W. Sixth Street, Suite 1940, Austin, Texas 78701. The total amount of the contract is not to exceed $50,000.00, plus $3,500.00 approved travel expenses. The term of the contract is November 15, 2012, through December 31, 2013, with option to renew for one (1) additional one-year period.

2. George K. Baum & Company, 8117 Preston Road, Suite 300, Dallas, Texas 75225. The total amount of the contract is not to exceed $50,000.00, plus $5,000.00 approved travel expenses. The term of the contract is December 4, 2012, through August 31, 2013, with option to renew for up to two (2) additional one-year periods.

TRD-201206266
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 6, 2012

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Notice of Contract Award

The Texas Comptroller of Public Accounts (Comptroller) announces the award of an outside counsel contract to Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701-4069, for legal counsel services under RFP 205b.

The notice of request for proposals was published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7776). The term of the contract is December 6, 2012, through August 31, 2013. The amount of the contract is not to exceed $75,000.00.

TRD-201206304
Jennifer W. Sloan
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 7, 2012

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/17/12 - 12/23/12 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/17/12 - 12/23/12 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201206357
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 11, 2012

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State Board of Dental Examiners

Disciplinary Matrix

The State Board of Dental Examiners' (Board) Disciplinary Matrix was first published in the September 3, 2010, issue of the *Texas Register* (35 TexReg 8152). The Matrix was developed to outline Board policy when the Board takes disciplinary action in accordance with Texas Occupations Code Chapters 263, 265, and 266. The matrix also provides licensees, attorneys, the public, and Administrative Law Judges ready access to the Board's enforcement policies. Further, the matrix is intended to maintain flexibility in determining the most appropriate sanction for each violation and allow the Board to take into account aggravating and mitigating factors (i.e., the licensee's compliance history, the seriousness of the violation, the threat to the public's health and safety) when determining sanctions.

The matrix is organized by violation type and distinguished by violation tiers. The violations described in the matrix mirror the violations specified in Texas Occupations Code (Dental Practice Act). Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to public safety, after consideration of any aggravating or mitigating factors. Violations that are distinguished as Second, Third, or Fourth Tier Violations are those that the Board determines to be more serious, or which pose more than a minimal threat to public safety, after consideration of any aggravating or mitigating factors. Each violation tier in the matrix includes a description of events that might fall within that violation tier. The corresponding sanction description describes each of the sanctions that could be imposed.

The Board first adopted the matrix and voted to publish it in the *Texas Register* at the August 20, 2010 meeting. At the November 9, 2012 Board meeting, the Board voted to amend the Matrix to include additional explanation and direction regarding the consequences of criminal behavior. The Board republishes the matrix with the adopted changes.

This Matrix is effective immediately upon publication in the *Texas Register.*

Texas State Board of Dental Examiners
Disciplinary Matrix

Table of Contents

VIOLATION TIERS

First Tier Violations: Violations that are distinguished as First Tier Violations are those that the Board determines to be less serious, or which pose minimal threat to public safety, after consideration of any aggravating or mitigating factors.

Second, Third, or Fourth Tier Violations: Violations that are distinguished as Second, Third, or Fourth Tier Violations are those that the Board determines to be more serious, or which pose more than a minimal threat to public safety, after consideration of any aggravating or mitigating factors.

SANCTIONS

The Board will determine an appropriate sanction after consideration of any aggravating or mitigating factors.
When considering conduct constituting a violation of multiple statute sections, the Board will determine an appropriate sanction after consideration of the sanction recommendations from all applicable violation sections and any aggravating or mitigating factors.
NOTE: All Sanctions other than denial of licensure, revocation of license, emergency suspension of license, or surrender of license should include a stipulation requiring completion of the online jurisprudence assessment.

Levels listed from lowest (no action) to highest (revocation):

- Dismissal – No disciplinary action. Dismissal may be conditioned.
- Administrative Penalty (Ticket) – Fine-based penalty limited to those violations that do not involve the provision of direct patient care.
- Warning – Lowest level of disciplinary action.
- Reprimand – Increased level of disciplinary action.
- Suspension – Increased level of disciplinary action. Suspension may be probated in full be enforced in full or for limited time periods.
    - Emergency Suspension – If a licensee is found by the board or executive committee to constitute a clear, imminent, or continuing threat to a person's physical health or well-being, the person's license or permit will be immediately suspended.
- Revocation of license or certification. Voluntary surrender may be accepted in lieu of revocation.

AGGRAVATING AND MITIGATING FACTORS

The Board will consider all factors required by statute or board rule (e.g., Tex. Occ. Code Chapter 53). In addition, the Board will consider aggravating or mitigating factors, including the following:

- Potential or actual patient harm
- Prior disciplinary action
- Prior violations of a similar nature
- Self-report or voluntary admission of violation
- Remedial measures taken to correct or mitigate harm
- Rehabilitative potential
- Level of competency exhibited over course of career
- Attempts to circumvent a statute or board rule
- Isolated or repeated violation
- Number of violations
- Cooperation with board investigation and response to board communication
- Material or financial gain from violation
- Involvement of, or impairment by alcohol, illegal drugs, or controlled substances
- Criminal conduct
- Other relevant circumstances

ADMINISTRATIVE FINE SCHEDULE

See SBDE Rule §107.202 – 22 Tex. Admin. Code §107.202. The amount of an administrative fine assessed will be based on the following criteria:

- The seriousness of the violation, including but not limited to, the nature, circumstances, extent and the gravity of the prohibited acts and the hazard of potential hazard created to the health, safety, or welfare of the public;
- the economic damage to property or the environment caused by the violation;
- the history of previous violations:
- the amount necessary to deter future violations;
- efforts made to correct the violation; or
- any other matter the justice may require.

Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

First Offense:	Second Offense:	Third Offense:
≤ $3,000	≤ $4,000	≤ $5,000

ADMINISTRATIVE PENALTY SCHEDULE (Tickets)

An administrative penalty may consist only of a monetary penalty that does not exceed $1,000 for each violation. The total amount of penalties assessed against a person may not exceed $3,000 in a calendar year.

If the Respondent fails to pay or appeal the administrative penalty by the due date, the penalty amount will double, not to exceed the statutory maximum penalty for each violation.

Violation:	Administrative Penalty:
No Consumer Information	$250.00
Names of Dentists not Posted	$250.00
Fail to Display Registration (Dental office)	$250.00
Fail to Provide Records to Board	$500.00
Fail to Provide Records to Patient	$500.00
Fail to File Records Maintenance Agreement	$250.00
Fail to Notify Board of Change of Information	$250.00
Sanitation and Infection Control	$500.00
False/Misleading Communications/Unlawful or Deceptive Advertising	$250.00
Specialty Announcement-	$250.00
Advertising – Testimonials	$250.00
Improper Use of Trade Name	$500.00
No Prosthetic Identification	$250.00

STANDARD OF CARE

Licensee fails to treat a patient according to the standard of care in the practice of dentistry or dental hygiene. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(4)	
First Tier Violation: • Practice below minimum standard with a low risk of patient harm. • Failure to advise patient before beginning treatment. • Failure to make, maintain and keep adequate dental records.	Sanction: • Conditional dismissal including continuing education and/or restitution to patient for service rendered below minimum standard. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient for service rendered below minimum standard, and/or audit of practice procedures.
Second Tier Violation: • Practice below minimum standard with patient harm or risk of patient harm. • Misleading patient as to the gravity, or lack thereof, of their dental needs. • Failure to maintain appropriate life support training. • Abandonment of patient. • Failure to report patient death or injury requiring hospitalization. • Act or omission that demonstrates level of incompetence such that the person should not practice without remediation and subsequent demonstration of competency.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: period of enforced suspension, continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.
Third Tier Violation: • Negligence in treatment • Any intentional act or omission that risks or results in serious harm.	Sanction: • Denial, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

Standard of care violations continued on next page

STANDARD OF CARE (continued)

Licensee fails to use proper diligence in practice or fails to safeguard patients against avoidable infections. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(9)	
First Tier Violation: • Failure to properly document compliance with health and sanitation requirements. Office premises are maintained in compliance with health and sanitation requirements. Low risk of patient harm.	Sanction: • Administrative Penalty ticket • Conditional dismissal including continuing education, and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, and/or audit of practice procedures.
Second Tier Violation: • Office premises are not maintained in compliance with health and sanitation requirements. • Barrier techniques, disinfection, or sterilization techniques do not comply with health and sanitation requirements. • Failure to properly document controlled substance inventories or prescription records. • Failure to use reasonable diligence in preventing unauthorized persons from utilizing DEA or DPS permit privileges.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient, administrative fine, audit of practice procedures, and/or supervised practice or practice in a group setting.

Licensee is negligent in performing dental services and that negligence causes injury or damage to a dental patient. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(12)	
	Sanction: • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee is physically or mentally incapable of practicing in a manner that is safe for the person's dental patients. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(11)	
	Sanction: • Suspension of license pending medical evaluation determining licensee is safe to practice. If evaluation determining licensee is safe to practice is received, then probated suspension with stipulation including regular evaluations for ability to practice safely. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene in light of violation that may be a clear, imminent, or continuing threat to a person's physical health or well-being.

IMPERMISSIBLE DELEGATION

Licensee holds a dental license and employs, permits, or has employed or permitted a person not licensed to practice dentistry to practice dentistry in an office of the dentist that is under the dentist's control or management. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(8)	
First Tier Violation: • Impermissible delegation resulting in no more than a minimal risk of patient harm. Isolated incident.	Sanction: • Conditional dismissal including continuing education and/or restitution to patient. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.
Second Tier Violation: • Impermissible delegation resulting in actual patient harm, or presenting a risk of patient harm. • Repeated incidents or pattern of impermissible delegation.	Sanction: • Reprimand, or Probated Suspension with stipulations that may include: continuing education, administrative fine, restitution to patient, and/or audit of practice procedures.

DISHONORABLE OR UNPROFESSIONAL CONDUCT

NOTE: Violations under this section may also constitute violations under sections such as those related to criminal conduct, chemical dependency, or improper distribution of a drug.

Licensee practices dentistry or dental hygiene in a manner that constitutes dishonorable conduct. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(3)	
First Tier Violation: • Isolated dishonorable conduct resulting in no adverse patient effects.	Sanction: • Conditional Dismissal including continuing education. Elements normally related to dishonesty, fraud or deceit deemed to be unintentional. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, supervised practice or practice in a group setting, audit of practice procedures, and/or limitations on sedation or controlled substance permits.
Second Tier Violation: • Repeated acts of dishonorable conduct or dishonorable conduct which places a patient or the public at risk of harm. • Dishonorable conduct which impairs a person's ability to treat a patient according to the standard of care. • Dispensing, administering, prescribing, or distributing drugs for a non-dental purpose. • Failure to meet duty of fair dealing in advising, treating, or billing patient. • Diagnosis of dental disease, prescription of medication, or performance of impermissible acts by dental hygienist. • Practicing dental hygiene without required supervision.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, restitution to patient for financial exploitation, administrative fine, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits. • Denial of Licensure, Suspension or Revocation of Licensure. • If violation involves mishandling or improper documentation of controlled substances, misdemeanor crimes or criminal conduct involving alcohol, drugs or controlled substances, then the stipulations will also include mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing.
Third Tier Violation: • Failure to comply with a substantive board rule regarding dishonorable conduct resulting in serious patient harm. • Repeated acts of dishonorable conduct or dishonorable conduct which results in harm to a patient or the public. • Sexual or sexualized conduct with patient. • Financial exploitation or dishonorable conduct resulting in a material or financial loss to a patient in excess of $4,999.	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

CRIMINAL OFFENSES

The Board considers criminal behavior to be highly relevant to an individual's fitness to engage in the practice of dentistry and has determined that the disciplinary actions imposed by these guidelines promote the intent of the Act. This matrix was developed to address criminal actions for which the Dental Practice Act does not mandate the Board take a specific disciplinary action.

The "date of disposition," when used to calculate the application of disciplinary actions, refers to the date a criminal action is entered by the court. The disciplinary actions imposed by the guidelines may be used in conjunction with other types of disciplinary actions, including administrative penalties.

The Board has determined that the nature and seriousness of certain crimes outweigh other factors to be considered in accordance with Section 101.8(h) of the Board's Rules and Regulations and so necessitate the disciplinary action as described below. Regarding the crimes enumerated in this matrix, the Board has weighed the factors in Section 101.8(h) in a light most favorable to the individual, and even if these factors are present, the Board has concluded that the following disciplinary actions apply to individuals with the criminal offenses as described below:

Type of Offense	**Disciplinary Action**
Criminal offenses requiring the individual maintain current registration as a sex offender with the Department of Public Safety Chapter 62, Code of Criminal Procedure	Denial or Revocation
Criminal offenses relating to the regulation of dentists, dental hygienists, or dental assistants or committed in the practice of or connected to dentistry, dental hygiene or dental assistance	0-5 years since disposition – Denial or Revocation 6-10 years since disposition – 5 years Probated Suspension 11-20 years since disposition – 3 years Probated Suspension Over 20 years since disposition – 1 year Probated Suspension

Type of Offense	Disciplinary Action
Criminal offense relating to the regulation of a plan to provide, arrange for, or reimburse any part of the cost of dental care services or the regulation of the business of insurance	0-5 years since disposition – Denial or Revocation 6-10 years since disposition – 5 years Probated Suspension 11-20 years since disposition – 3 years Probated Suspension Over 20 years since disposition – 1 year Probated Suspension
Felony offenses under: (1) Chapter 481 or 483, Health and Safety Code; (2) Section 485.033, Health and Safety Code; or (3) the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. §801 et seq.).	0-5 years since disposition – Denial or Revocation 6-10 years since disposition – 5 years Probated Suspension 11-20 years since disposition – 3 years Probated Suspension Over 20 years since disposition – 1 year Probated Suspension
All other felony offenses	0-5 years since disposition – 5 years Probated Suspension 6-10 years since disposition – 3 years Probated Suspension 11-20 years since disposition – 1 year Probated Suspension

Type of Offense	Disciplinary Action
Misdemeanor offenses under: (1) Chapter 22, Penal Code, other than a misdemeanor punishable by fine only: (2) Section 25.07, Penal Code; or (3) Section 25.071, Penal Code.	0-5 years since disposition – 3 years Probated Suspension 6-10 years since disposition – 1 year Probated Suspension
All other misdemeanor offenses	0-5 years since disposition – 1 year Probated Suspension

CHEMICAL DEPENDENCY OR IMPROPER POSSESSION OR DISTRIBUTION OF DRUG
NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

Licensee is addicted to or habitually intemperate in the use of alcoholic beverages or drugs or has improperly obtained, possessed, used, or distributed habit-forming drugs or narcotics. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(7)	
First Tier Violation: • Misuse of drugs or alcohol without patient interaction and no risk of patient harm or adverse patient effects. No previous history of misuse and no other aggravating circumstances.	Sanction: • Probated Suspension with stipulations that may include: continuing education, supervised practice or practice in a group setting, limitations on sedation or controlled substance permits, random drug screens, and/or enrollment in a Board approved peer assistance program.
Second Tier Violation: • Improperly distributes habit-forming drugs or narcotics • Prescribes or dispenses a controlled substance for a non-dental purpose. • Prescribes or dispenses a controlled substance to a person who is not a dental patient, or to a patient without adequate diagnosis of the need for prescription.	Sanction: • Probated Suspension with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
Third Tier Violation: • Misuse of drugs or alcohol with a risk of patient harm or adverse patient effects. Misuse of drugs or alcohol and other serious practice violation noted.	Sanction: • Enforced or Probated Suspension with stipulations that may include: period of enforced suspension, mandatory evaluation and enrollment in a Board approved peer assistance program, and abstention from unauthorized use of drugs and alcohol, to be verified by random drug testing, continuing education, supervised practice or practice in a group setting, and/or limitations on sedation or controlled substance permits.
Fourth Tier Violation: • Misuse of drugs or alcohol with significant physical injury or death of a patient or a risk of significant physical injury or death.	Sanction: • Denial of licensure, suspension of license, revocation of license or request for voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

FRAUD AND MISREPRESENTATION

NOTE: Violations under this section may also constitute dishonorable or unprofessional conduct violations.

Licensee obtains a license by fraud or misrepresentation. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(6)	
First Tier Violation: • Failure to honestly and accurately provide information that may have affected the Board's determination of whether to grant or renew a license.	Sanction: • Conditional dismissal including continuing education. Elements normally related to dishonesty, fraud or deceit are deemed to be unintentional. • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine.
Second Tier Violation: • Intentional misrepresentation of previous licensure, education, or professional character, including failure to disclose criminal convictions.	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee engages in deception or misrepresentation in soliciting or obtaining patronage. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(5)	
Violation: • Engaging in false advertising. • Creating unjustified expectation. • Engaging in false, misleading or deceptive referral schemes. • Failing to comply with requirements relating to professional signs. • Failure to list at least one dentist practicing under a trade name in an advertisement. • Falsely advertising as a specialist in one of the ADA recognized specialties or advertising as a specialist in an area not recognized by the ADA. • Other violations as assigned by rule.	Sanction: • For a first violation of advertising restrictions, no sanction will be pursued until an opportunity to cure has been provided pursuant to statutory requirements. • Administrative Penalty ticket • Warning or Reprimand with stipulations that may include: cure of violation, continuing education, and/or administrative fine.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE

NOTE: A violation of any law relating to the regulation of dentists or dental hygienists, including those law violations expressed elsewhere in this matrix, will also be considered a violation of the Dental Practice Act, at Tex. Occ. Code §263.002(a)(10).

Licensee violates or refuses to comply with a law relating to the regulation of dentists or dental hygienists. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(10)	
First Tier Violation: • Isolated failure to make, maintain and keep adequate dental records not resulting in patient harm. • Failure to notify patients that complaints concerning dental services can be directed to the Board. • Failure to post names of, degrees received by, and schools attended by each dentist practicing in office. Failure to properly exclude names of dentists not practicing in office. • Failure to place identifying mark on a removable prosthetic device. • Failure to notify the Board of maintenance of records agreement. • First Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Administrative Penalty ticket. • Conditional dismissal including continuing education, and or audit of practice procedures.
Second Tier Violation: • Failure to make, maintain and keep adequate dental records resulting in potential for patient harm. • Failure to obtain written, signed informed consent. • Failure to provide full dental records to the Board upon request. • Failure to maintain an appropriate permit for a mobile dental facility. • Perform treatment outside licensee's scope of practice not resulting in patient harm. • Prescription of controlled substance while DPS or DEA permit is expired. • Second Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Conditional dismissal including continuing education, restitution to patient for service provided without informed consent, and/or audit of practice procedures. • Warning or Reprimand with stipulations that may include: continuing education, administrative fine, restitution to patient for service provided, and/or audit of practice procedures.
Third Tier Violation: • Failure to make, maintain and keep adequate dental records resulting in actual patient harm. • Violation of stipulation in a prior Board Order. • Perform treatment outside licensee's scope of practice resulting in patient harm or potential for patient harm. • Prescription of controlled substance without DPS or DEA permit. • Third Tier or Fourth Tier violation of another law regulating dentists or dental hygienists.	Sanction: • Reprimand or Probated Suspension with stipulations that may include: enforced suspension of license until licensee obtains compliance with all stipulations in prior Board Orders, continuing education, restitution to patient, and/or administrative fine. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

VIOLATION OF LAW REGULATING DENTISTRY OR DENTAL HYGIENE (continued)

Licensee knowingly provides or agrees to provide dental care in a manner that violates a federal or state law that: regulates a plan to provide, arrange for, pay for, or reimburse any part of the cost of dental care services; or regulates the business of insurance. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(14)	
	Sanction: • Reprimand or Probated Suspension with stipulations that may include: continuing education, administrative fine, repayment of any funds gained in violation of applicable law. • Denial of licensure or revocation. • Emergency suspension of license to practice dentistry or dental hygiene.

Licensee holds a license or certificate in another state and that state reprimands the licensee, suspends or revokes the licensee's license or certificate or places the licensee on probation, or imposes another restriction on the licensee's practice. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(13)	
First Tier Violation: • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction did not cause patient harm or risk patient harm.	Sanction: • Conditional dismissal including continuing education, and/or audit of practice procedures.
Second Tier Violation: • License or certificate is reprimanded or restricted in another jurisdiction. The action leading to the reprimand or restriction caused patient harm or caused a risk of patient harm. • Failure to report disciplinary action received in another jurisdiction.	Sanction: • Warning, Reprimand, or Probated Suspension with stipulations that may include: continuing education, administrative fine, and/or audit of practice procedures.
Third Tier Violation: • License or certificate is suspended, revoked, or placed on probation in another jurisdiction. • License or certificate is reprimanded or restricted in another jurisdiction for action that caused severe patient harm or death.	Sanction: • Denial of licensure, revocation, or voluntary surrender. • Emergency suspension of license to practice dentistry or dental hygiene

OTHER VIOLATIONS

License required to practice dentistry or dental hygiene Dental Practice Act (DPA), Tex. Occ. Code §256.001	
	Sanction: • Issuance of Cease and Desist Order with referral of all information to local law enforcement.

Licensee is adjudged under the law to be insane. Dental Practice Act (DPA), Tex. Occ. Code §263.002(a)(1)	
	Sanction: • Denial of licensure or revocation of license to practice dentistry or dental hygiene. • Emergency suspension of license to practice dentistry or dental hygiene.

DENTAL ASSISTANTS

Permitted Duties Dental Practice Act (DPA), Tex. Occ. Code §265.003	
First Tier Violation: • Failure to comply with procedural Board rule such as failure to timely complete continuing education to maintain a Board-issued certification.	Sanction: • Conditional dismissal including continuing education. • Denial of certification or revocation of certificates.
Second Tier Violation: • Practices dentistry or dental hygiene, or otherwise performs activities outside the scope of permitted duties for dental assistants.	Sanction: • Denial of certification or revocation of certificates.

DENTAL LABORATORIES

Registration Required Dental Practice Act (DPA), Tex. Occ. Code §266.151	
Violation: • Operation of a dental laboratory or offer to provide dental laboratory services without a registration certificate.	Sanction: • Issuance of Cease and Desist Order with referral of all information to local law enforcement.

Certified Dental Technician Dental Practice Act (DPA), Tex. Occ. Code §266.152	
Violation: • Failure to have at least one dental technician working on the laboratory's premises who is certified by a recognized board of certification for dental technology.	Sanction: • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine. • Denial of certification or revocation of certification.

Applicant or certificate holder has violated, aided another person, or allowed a person under their direction to violate a law regulating the practice of dentistry. Dental Practice Act (DPA), Tex. Occ. Code §266.251	
Violation: • Failure to obtain written work orders or prescriptions from a licensed dentist, and maintain appropriate records. • Failure to keep premises and records open to inspection during working hours. • Failure to comply with the requirements for notification of change of ownership.	Sanction: • Warning or Reprimand with stipulations that may include: continuing education, and/or administrative fine. • Denial of certification or revocation of certification.

TRD-201206320
Glenn Parker
Executive Director
State Board of Dental Examiners
Filed: December 10, 2012

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Texas Education Agency

Request for Applications Concerning the 2013-2014 Public Charter School Start-Up Grant

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-13-104 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter Schools Program start-up funds, and are one of the following: (1) a campus charter school approved by its local board of trustees pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before January 31, 2013, that submits all required documentation as required by the RFA and previously described in the "To the Administrator Addressed" letter dated August 24, 2012; (2) an open-enrollment charter school approved by the State Board of Education (SBOE) under the Generation 17 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school approved by the SBOE pursuant to the TEC, Chapter 12, Subchapter E; or (4) an open-enrollment charter school designated by the commissioner of education on or before February 15, 2013, as a new school under an existing charter. For a charter awarded by the SBOE under the Generation 17 application, all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to applying for grant funding. Charter schools that have been notified of contingencies to be cleared prior to receiving a charter contract should be diligent in working with TEA to complete this process so that a grant application may be completed and submitted by the deadline date.

Description. The purpose and goals of the 2013-2014 Public Charter School Start-Up Grant program are to provide financial assistance for the planning, program design, and initial implementation of charter schools and expand the number of high-quality charter schools available to students.

Dates of Project. The 2013-2014 Public Charter School Start-Up Grant will be implemented primarily during the 2013-2014 school year and partially during the 2014-2015 school year. Applicants should plan for a starting date of no earlier than July 1, 2013, and an ending date of no later than September 30, 2014.

Project Amount. Approximately $9 million is available for funding the 2013-2014 Public Charter School Start-Up Grant. It is anticipated that approximately 20 grants of no more than $600,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding if they meet the eligibility criteria. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

Applicants' Conference. A webinar will be held on Wednesday, January 23, 2013, from 9:00 a.m. to 12:00 p.m. Register for the webinar at https://www2.gotomeeting.com/register/649238818.

Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.state.tx.us or faxed to (512) 463-9732 prior to Friday, January 11, 2013. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. RFAs are no longer available in print. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Further Information. For clarifying information about the RFA, contact Christine McCormick, Division of Grants Administration, Texas Education Agency, (512) 463-8525. In order to assure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.state.tx.us. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, February 26, 2013. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, March 5, 2013, to be eligible to be considered for funding.

TRD-201206403
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: December 12, 2012

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Texas Commission on Environmental Quality

Adoption of Amendments to the Concrete Batch Plants Air Quality Standard Permit

On December 5, 2012, the Texas Commission on Environmental Quality (TCEQ or commission) adopted the amendments to the air quality standard permit for concrete batch plants. While the standard permit is protective of public health, the TCEQ initiates the amendments to account for the 2006 AP-42 emission factors and engine requirements as promulgated by the United States Environmental Protection Agency (EPA). The pollutants of concern at concrete batch plants are particulate matter (PM) less than or equal to 2.5 microns in diameter ($PM_{2.5}$) and particulate matter less than or equal to ten microns in diameter (PM_{10}).

Background and Summary

On February 11, 2010, the EPA no longer allowed use of the 1997 policy that granted sources and permitting authorities to use a demonstration of compliance with the National Ambient Air Quality Standards (NAAQS) requirements for PM_{10} as a surrogate for meeting the NAAQS requirements for $PM_{2.5}$. The amendments to this standard permit include controls, which will meet the requirements for $PM_{2.5}$ and reference federal engine requirements. The federal engine requirements regulate hazardous air pollutants, PM, and nitrogen oxides (NO_x) that engines emit at varied amounts. Based on the size of the engines used at concrete batch plants, particulate matter, volatile organic compounds, carbon monoxide, lead, nitrogen dioxide, formaldehyde, and sulfur dioxide are emitted, but not at levels of concern.

The amendments to the standard permit will be effective for standard permits issued on or after December 21, 2012. Applicants for renewals issued in the period between December 21, 2012, and December 22, 2014, will register for the 2012 amended concrete batch plant standard permit (CBPSP), but will not be required to comply with the new CBPSP requirements until December 22, 2014. Applicants for renewals issued after December 22, 2014, will be required to register and comply with the 2012 amended CBPSP. These amendments include revisions identified since the last review of the concrete batch plant standard permit.

For the entire summary, analysis of comments, and the final amendments to the standard permit, please visit: *http://www.tceq.texas.gov/permitting/air/newsourcereview/mechanical/cbp.html.*

For further information, please contact Becky Southard, at (512) 239-1638.

Statutory Authority

TCEQ adopts this standard permit under Texas Health and Safety Code (THSC), §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.023, Orders, which authorizes the commission to issue orders necessary to carry out the policy and purposes of the Texas Clean Air Act; THSC, §382.051, Permitting Authority of the Commission: Rules, which authorizes the commission to issue permits, including standard permits for similar facilities; THSC, §382.0513, Permit Conditions, which authorizes the commission to establish and enforce permit conditions consistent with THSC, §382.05195, Standard Permit, which authorizes the commission to issue and amend standard permits according to the procedures set out in that section.

TRD-201206282
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 7, 2012

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Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is January 22, 2013. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or Inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on January 22, 2013. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: A & M Interests, Incorporated dba North Side Texaco; DOCKET NUMBER: 2012-1446-PST-E; IDENTIFIER: RN101433100; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; 30 TAC §334.50(b)(1)(A)(i) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $10,132; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: AA Enterprises, Incorporated dba Hanna Food Store; DOCKET NUMBER: 2012-1435-PST-E; IDENTIFIER: RN104889068; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks; PENALTY: $3,561; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: ACTEV, INCORPORATED dba Hans Gas Station; DOCKET NUMBER: 2012-1579-PST-E; IDENTIFIER: RN101532471; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,825; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2570; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Ameen Enterprises LLC dba Bargain Town; DOCKET NUMBER: 2012-1346-PST-E; IDENTIFIER: RN102264546; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: B.K.S. Incorporated dba Bissonnet Mobil; DOCKET NUMBER: 2012-1966-PST-E; IDENTIFIER: RN100532811; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $2,567; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Blue Star Materials, LLC; DOCKET NUMBER: 2012-1398-AIR-E; IDENTIFIER: RN105722862; LOCATION: Chico, Wise County; TYPE OF FACILITY: aggregate handling facility; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 88090, Special Conditions (SC) Numbers 4. and 6.E., and Texas Health & Safety Code (THSC), §382.085(b), by failing to prevent visible fugitive dust emissions from leaving the property that exceed a cumulative 30 seconds in duration over a six-minute period and by failing to water roads or apply environmentally sensitive chemicals upon detection of visible emissions; 30 TAC §116.115(b)(2)(E)(i) and (iv) and (c), NSR Permit Number 88090, SC Numbers 9.C-F., and THSC, §382.085(b), by failing to maintain sufficient records in order to demonstrate compliance; and 30 TAC §116.115(c), NSR Permit Number 88090, SC Number 5, and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations at all transfer points, screens, and crushers; PENALTY: $2,940; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: BLUE WATER FALL, INCORPORATED dba Shop & Go; DOCKET NUMBER: 2012-1241-PST-E; IDENTIFIER: RN102465028; LOCATION: Harker Heights, Bell County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; PENALTY: $7,256; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Brownsboro; DOCKET NUMBER: 2012-1945-PWS-E; IDENTIFIER: RN101212744; LOCATION: Brownsboro, Henderson County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A), §290.110(b)(4), and Texas Health & Safety Code, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals or more often as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; PENALTY: $52; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of La Villa; DOCKET NUMBER: 2012-1352-PWS-E; IDENTIFIER: RN101388957; LOCATION: La Villa, Hidalgo County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.107(e), by failing to report to the executive director the results for triennial synthetic organic contaminants; and 30 TAC §290.46(f)(3)(C)(iii) and (4), by failing to retain records of the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; PENALTY: $5,230; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: City of Midway; DOCKET NUMBER: 2012-1634-MWD-E; IDENTIFIER: RN101920262; LOCATION: Midway, Madison County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0013378001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; PENALTY: $10,540; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Whitney; DOCKET NUMBER: 2012-1084-MWD-E; IDENTIFIER: RN101919421; LOCATION: Whitney, Hill County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0011408002, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, by failing to comply with permitted effluent limitations; PENALTY: $7,820; Supplemental Environmental Project offset amount of $6,256 applied to Household Hazardous Waste Collection; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: David Stanley Wallace, Sr. dba Spring Meadow Mobile Home Park; DOCKET NUMBER: 2012-1699-PWS-E; IDENTIFIER: RN102316783; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $1,227; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(13) COMPANY: First National Bank of Granbury; DOCKET NUMBER: 2012-1754-WR-E; IDENTIFIER: RN106449234; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: golf course; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to impounding, diverting, or using state water; PENALTY: $750; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Garrett Flying Service, Incorporated dba Austin Bayou Golf Course and RV Park; DOCKET NUMBER: 2012-1048-WR-E; IDENTIFIER: RN101626414; LOCATION: Danbury, Brazoria County; TYPE OF FACILITY: property; RULE VIOLATED: TWC, §11.121 and 30 TAC §297.11, by failing to obtain authorization prior to diverting and impounding state water; PENALTY: $7,411; Supplemental Environmental Project offset amount of $2,964 applied to Brazoria County - Wastewater Treatment Assistance for Low Income Homeowners; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: GEO SPECIALTY CHEMICALS, INCORPORATED; DOCKET NUMBER: 2012-1268-IWD-E; IDENTIFIER: RN100219070; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: organic chemicals manufacturing plant with an associated wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0002558000, Effluent Limitations and Monitoring Requirements Number 1 for Outfall Number 002, by failing to comply with permitted effluent limits; PENALTY: $10,725; Supplemental Environmental Project offset amount of $4,290 applied to City of Pasadena - Capture Gate on Preston; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Hicks Oil & Butane Company dba Times Market; DOCKET NUMBER: 2012-1668-PST-E; IDENTIFIER: RN102965662; LOCATION: Harlingen, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Intercontinental San Antonio Forum Limited Partnership; DOCKET NUMBER: 2012-1777-PST-E; IDENTIFIER: RN102376621; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: emergency generator; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; and 30 TAC §334.50(b)(2) and TWC, §26.3475(b), by failing to provide release detection for the suction piping associated with the UST system; PENALTY: $4,003; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: James Thomas Ramage dba Family Community Center Mobile Home Park; DOCKET NUMBER: 2012-1684-PWS-E; IDENTIFIER: RN101282036; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.108(e), by failing to provide the results of triennial sampling for radionuclide levels to the executive director; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; 30 TAC §290.106(e), by failing to provide the results of quarterly nitrate/nitrite sampling to the executive director; 30 TAC §290.113(e), by failing to provide the results of triennial sampling for Stage 1 disinfectant byproduct contaminant levels to the executive director; and 30 TAC §290.107(e), by failing to provide the results of annual sampling for volatile organic contaminants levels to the executive director; PENALTY: $920; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(19) COMPANY: JETTA, INCORPORATED and Paul Sims dba Rosebowl Regency Inn; DOCKET NUMBER: 2012-1324-PWS-E; IDENTIFIER: RN101196103; LOCATION: Brenham, Washington County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.106(e), by failing to timely provide the results of annual nitrate monitoring to the TCEQ's executive director; 30 TAC §290.106(e), by failing to timely provide the results of triennial mineral monitoring to the TCEQ's executive director; and 30 TAC §290.109(f)(3), by failing to comply with the Maximum Contaminant Level for total coliform; PENALTY: $455; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(20) COMPANY: Jose O. Beltran and Maria A. Beltran dba 1017 Cafe; DOCKET NUMBER: 2012-1353-PWS-E; IDENTIFIER: RN102679461; LOCATION: San Isidro, Starr County; TYPE OF FACILITY: restaurant; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of triennial mineral and metal monitoring to the executive director; and 30 TAC §290.116(b)(2) and §290.122(b)(2)(B), by failing to complete corrective action or be in compliance with an approved corrective action plan and schedule within 120 days of receiving notification from a laboratory of fecal indicator-positive raw groundwater source samples and by failing to provide notification; PENALTY: $1,025; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(21) COMPANY: King Fuels, Incorporated dba Stubbys 8; DOCKET NUMBER: 2012-1419-PST-E; IDENTIFIER: RN102281151; LOCATION: Onalaska, Polk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the underground storage tank (UST) system; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,626; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: LONE STAR DISTRIBUTORS, INCORPORATED dba Lone Star Food Store; DOCKET NUMBER: 2012-1624-PST-E; IDENTIFIER: RN102358207; LOCATION: Rio Hondo, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the underground storage tank system; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(23) COMPANY: M.R.D. GROUP, INCORPORATED dba Shaver Food Mart; DOCKET NUMBER: 2012-1440-PST-E; IDENTIFIER: RN105455901; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health & Safety Code

§382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $4,350; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: McDonald's Corporation; DOCKET NUMBER: 2012-1598-MWD-E; IDENTIFIER: RN102186806; LOCATION: Jersey Village, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; PENALTY: $9,450; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: McLennan County Water Control and Improvement District Number 2; DOCKET NUMBER: 2012-2023-MWD-E; IDENTIFIER: RN102915733; LOCATION: McLennan County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System, Permit Number WQ0010344001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits for ammonia nitrogen; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: MODAK & PARTNERS, INCORPORATED dba Js New Way; DOCKET NUMBER: 2012-1548-PST-E; IDENTIFIER: RN101776391; LOCATION: Tyler, Smith County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Herbert Darling, (512) 239-2570; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(27) COMPANY: MONROE @ WINKLER INVESTMENTS, Incorporated dba Mike Food Mart; DOCKET NUMBER: 2012-1771-PST-E; IDENTIFIER: RN101886216; LOCATION: South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $5,100; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: Navroz Lalani dba Topps Exxon Junction; DOCKET NUMBER: 2012-1718-PST-E; IDENTIFIER: RN102375201; LOCATION: Daingerfield, Morris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,942; ENFORCEMENT COORDINATOR: Andrea Park, (713) 422-8970; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(29) COMPANY: Patricia Oakley dba Gokeys Food Store; DOCKET NUMBER: 2012-1476-PST-E; IDENTIFIER: RN102719085; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(C) and (5)(B), by failing to obtain the underground storage tank (UST) delivery certificate and notify the agency of any change or additional information regarding the UST system within 30 days after the change in ownership of the facility; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $5,711; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: Pen Hang, Incorporated dba James Mini Mart; DOCKET NUMBER: 2012-1890-PST-E; IDENTIFIER: RN102712957; LOCATION: Mount Pleasant, Titus County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tank (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $3,504; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(31) COMPANY: Phuong T. Rowlett dba B & B Food Store; DOCKET NUMBER: 2012-1406-PST-E; IDENTIFIER: RN101879930; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST system; PENALTY: $4,257; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(32) COMPANY: Resham Lowt dba Shamrock Gas Mart Richey Road; DOCKET NUMBER: 2012-1745-PST-E; IDENTIFIER: RN102271681; LOCATION: South Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $1,975; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: ROYAL K INVESTMENTS CORPORATION dba Highway 75 Shell; DOCKET NUMBER: 2012-1381-PST-E; IDENTIFIER: RN102452927; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Sirhan Investments, Incorporated dba Lucky Mart 3072; DOCKET NUMBER: 2012-1701-PST-E; IDENTIFIER: RN102397312; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Sarah Davis, (512) 239-1653; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(35) COMPANY: Syed Sajid dba Discount Gas & Food Mart; DOCKET NUMBER: 2012-1776-PST-E; IDENTIFIER: RN101545572; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the UST system; PENALTY: $2,380; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: T.F.R. ENTERPRISES, Incorporated; DOCKET NUMBER: 2012-1369-MLM-E; IDENTIFIER: RN106369523; LOCATION: Flatonia, Fayette County; TYPE OF FACILITY: recycling; RULE VIOLATED: 30 TAC §328.5(f)(3), by failing to provide adequate financial assurance for the closure of a recycling facility; 30 TAC §328.5(h), by failing to make available a copy of the Fire Prevention and Suppression Plan to the local fire prevention authority having jurisdiction over the facility for review and coordination; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) TXR05000, Part III, TPDES Construction General Permit (CGP) TXR150000, Part II, Section E(3)(a), and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to implement the MSGP, Storm Water Pollution Prevention Plan and CGP for the facility; and 30 TAC §281.25(a)(4) and 40 CFR §122.26(c) and TPDES CGP TXR150000, Part II Section E(1)(e), by failing to post a copy of the Notice of Intent/Construction Site Notice at the facility in a location where it is readily available for viewing; PENALTY: $5,580; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(37) COMPANY: Tall Timbers Utility Company, Incorporated; DOCKET NUMBER: 2012-0629-MWD-E; IDENTIFIER: RN101519981; LOCATION: Tyler, Smith County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5), and Texas Pollutant Discharge Elimination System Permit Number WQ0013000001, Permit Conditions Number 2.d., by failing to prevent the discharge of sewage sludge into water in the state; PENALTY: $60,000; Supplemental Environmental Project offset amount of $30,000 applied to The Conservation Fund - Bunn's Lake Habitat Acquisition & Preservation Project; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(38) COMPANY: Texas Brine Company, L.L.C.; DOCKET NUMBER: 2012-1926-WQ-E; IDENTIFIER: RN105125306; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: sodium chloride brine water mining, sale, and distribution facility; RULE VIOLATED: TWC, §26.121(a), by failing to prevent the discharge of concentrated brine solution into or adjacent to any water in the state; PENALTY: $9,750; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(39) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2012-1023-PWS-E; IDENTIFIER: RN101255693; LOCATION: Possum Kingdom Lake, Palo Pinto County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health & Safety Code (THSC), §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §§290.42(d)(1), 290.110(b)(1) and 290.111(d)(2)(B) and THSC, §341.0315(c), by failing to provide water from a source that has been given complete treatment (2-log removal of Cryptosporidium oocysts, 3-log removal or inactivation of Giardia cysts, and 4-log removal or inactivation of viruses); 30 TAC §290.46(s)(1), by failing to calibrate the facility's flow measuring device at least once every 12 months; 30 TAC §290.42(f)(1)(E)(ii), by failing to provide adequate containment facilities for all liquid chemical storage tanks; 30 TAC §290.41(e)(2)(C), by failing to establish a radius restricted zone of 200 feet from the raw water intake prohibiting recreational activities and trespassing; 30 TAC §290.42(d)(5), by failing to provide a flow measuring device to measure the treated water used to backwash the filters; 30 TAC §290.42(d)(13), by failing to identify the influent, effluent, waste backwash, and chemical feed lines every five feet, either by the use of a label or by various colors of paint; 30 TAC §290.44(a)(4), by failing to locate the water line a minimum of 24 inches below the ground surface; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.121(a) and (b)(1), by failing to compile an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; PENALTY: $750; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: United Fuel & Energy Corporation; DOCKET NUMBER: 2012-1815-PST-E; IDENTIFIER: RN102901451; LOCATION: Kilgore, Gregg County; TYPE OF FACILITY: fleet refueling and retail facility; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current UST delivery certificate before accepting delivery of a regulated substance into the UST system; and 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $10,010; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (817) 588-5800.

(41) COMPANY: Victor Goforth dba Goforth Enterprises - Vics Auto Repair; DOCKET NUMBER: 2012-1206-WQ-E; IDENTIFIER: RN105596969; LOCATION: Fredericksburg, Gillespie County; TYPE OF FACILITY: automobile salvage and repair shop; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $2,750; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(42) COMPANY: Woodmark Utilities, Incorporated; DOCKET NUMBER: 2012-0647-MWD-E; IDENTIFIER: RN101511400; LOCATION: Tyler, Smith County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125 and §319.11(d), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013168001, Monitoring and Reporting Requirements Number 1, by failing to submit accurate flow measurements; 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0013168001, Permit Conditions Numbers 2.b. and 2.d., by failing to prevent the unauthorized discharge of sewage sludge into water in the state; and 30 TAC §305.126(a) and TPDES Permit Number WQ0013168001, Operational Requirements Number 8, by failing to commence construction of the necessary additional treatment and/or collection units when reaching 90% of the permitted flow; PENALTY: $47,102; Supplemental Environmental Project offset amount of $23,591 applied to The Conservation Fund - Bunn's Lake Habitat Acquisition & Preservation Project; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(43) COMPANY: Yam United Investment Group, LLC dba River City RV Park; DOCKET NUMBER: 2012-1785-PWS-E; IDENTIFIER: RN101212785; LOCATION: Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106(e), by failing to provide the results of annual nitrate/nitrite sampling to the executive director; 30 TAC §290.122(c)(2)(B), by failing to provide public notification regarding the failure to conduct coliform monitoring; and 30 TAC §290.106(e), by failing to provide the results of triennial mineral sampling to the executive director; PENALTY: $755; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: ZAIN's INVESTMENTS, Incorporated dba Z Fast Shop; DOCKET NUMBER: 2012-0435-PST-E; IDENTIFIER: RN102260734; LOCATION: Bryan, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,500; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(45) COMPANY: ZAK BUSINESS, Incorporated dba Kountry Mart; DOCKET NUMBER: 2012-1524-PST-E; IDENTIFIER: RN102434842; LOCATION: Cleveland, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201206363
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2012

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2013.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 22, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: ALMA DISCOUNT PACKAGE INC. d/b/a Alma Discount Grocery; DOCKET NUMBER: 2012-0023-PST-E; TCEQ ID NUMBER: RN104363536; LOCATION: 103 North West Interstate Highway 45 Service Road, Ennis, Ellis County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2), and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,629; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: BABWANI ASSOCIATES, INC. d/b/a McCart Food Store; DOCKET NUMBER: 2011-0684-PST-E; TCEQ ID NUMBER: RN101537082; LOCATION: 3756 McCart Avenue, Fort Worth, Tarrant County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to immediately investigate a suspected release of regulated substances; PENALTY: $31,820; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Hearthstone Properties, Delaware, LLC; DOCKET NUMBER: 2012-0691-MSW-E; TCEQ ID NUMBER: RN106193550; LOCATION: 957 South Blue Mound Road, Blue

Mound, Tarrant County; TYPE OF FACILITY: unauthorized solid waste disposal facility; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $7,750; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: KVS Business Inc. d/b/a Food & Fuel Stop 2; DOCKET NUMBER: 2012-0986-PST-E; TCEQ ID NUMBER: RN101847705; LOCATION: 826 North Henderson Boulevard, Kilgore, Gregg County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: $2,634; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: MACC Collision Repair Experts, Inc.; DOCKET NUMBER: 2011-2120-AIR-E; TCEQ ID NUMBER: RN100598762; LOCATION: 11201 Rojas Drive, El Paso, El Paso County; TYPE OF FACILITY: auto body repair and paint shop; RULES VIOLATED: Texas Health and Safety Code, §382.0518(a) and §382.085(b) and 30 TAC §116.110(a), by failing to obtain permit authorization for a source of air emissions prior to the commencement of operations of a facility which emits air contaminants; PENALTY: $1,050; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(6) COMPANY: RAKAH INC. d/b/a Quick Stop FFP 3341; DOCKET NUMBER: 2012-1342-PST-E; TCEQ ID NUMBER: RN102357431; LOCATION: 2401 East Highway 82, Gainesville, Cooke County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; TWC, §26.3467(a) and 30 TAC §334.8(c)(5)(A)(i), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,487; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Robert Paul Evans and Robert J. Evans Jr. d/b/a Terrell Sand and Recycling; DOCKET NUMBER: 2011-1042-AIR-E; TCEQ ID NUMBER: RN104467303; LOCATION: 18420 County Road 243, Terrell, Kaufman County; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to operate a rock crusher at the plant in the Saenz Pit after the temporary authorization expired; and 40 Code of Federal Regulations §60.8(a), 30 TAC §101.20(1), and THSC, §382.085(b), by failing to conduct a performance test of Crusher ST-23 within 60 days after achieving the maximum production rate; PENALTY: $1,500; STAFF ATTORNEY: Jeff Huhn, Litigation Division, MC R-13, (210) 403-4023; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Ryan Branch d/b/a Double Mountain Landscaping; DOCKET NUMBER: 2012-0903-LII-E; TCEQ ID NUMBER: RN106328586; LOCATION: 1721 County Road 452, Rotan, Fisher County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, altering, repairing, or servicing an irrigation system; and 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: $999; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Tawakoni Waste Water Corporation; DOCKET NUMBER: 2010-1255-MWD-E; TCEQ ID NUMBER: RN103014973; LOCATION: approximately 1,000 feet southwest of the intersection of Farm-to-Market (FM) Road 429 and FM Road 721, on the northwest side of FM Road 429, between FM Road 429 and Lake Tawakoni, Quinlan, Hunt County; TYPE OF FACILITY: waste water treatment facility; RULES VIOLATED: 30 TAC §305.125(5) and Texas Pollutant Discharge Elimination System Permit (TPDES) Number WQ0014297001, Operational Requirements Number 4, by failing to provide adequate safeguards to prevent the discharge of untreated or inadequately treated waste during electrical power failures; 30 TAC §305.125(17) and TPDES Number WQ0014297001, Sludge Provisions, by failing to timely submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(5) and TPDES Number WQ0014297001, Operational Requirements Number 1, by failing to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained; TWC, §26.121(a) and TPDES Number WQ0014297001, Permit Conditions Number 2.g., by failing to prevent unauthorized discharges from the wastewater collection system into or adjacent to water in the state; 30 TAC §319.5(b) and TPDES Number WQ0014297001, Interim Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to monitor the effluent characteristics at the frequency specified in the water quality permit; 30 TAC §305.125(1) and TPDES Number WQ0014297001, Operational Requirements Number 1, by failing to maintain process control records at the facility; 30 TAC §305.125(1) and TPDES Number WQ0014297001, Monitoring and Reporting Requirements Number 7.c., by failing to report effluent violations which deviate from the permitted effluent limitations by more than 40% in writing to the regional office and the enforcement division within five working days of becoming aware of the noncompliance; 30 TAC §319.7(a) and (c), and TPDES Number WQ0014297001, Monitoring and Reporting Requirements Number 3.b., by failing to conduct adequate quality controls for testing equipment; and 30 TAC §319.7(c) and TPDES Number WQ0014297001, Monitoring and Reporting Requirements Numbers 1 and 2, by failing to accurately complete and submit discharge monitoring reports; PENALTY: $22,935; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: ZZQ Enterprises, Inc. DBA Mini Mart Food Store; DOCKET NUMBER: 2011-1748-PST-E; TCEQ ID NUMBER: RN102356078; LOCATION: 2628 North Story Road, Irving, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES

VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide proper corrosion protection for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $16,070; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201206370
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2012

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 22, 2013.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: B F Beverage, Inc dba NRH Shell; DOCKET NUMBER: 2012-0979-PST-E; TCEQ ID NUMBER: RN101550713; LOCATION: 6551 Grapevine Highway, North Richland Hills, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate before accepting delivery of a regulated substance into the USTs; and 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals the sum of 1.0 percent of the total substance flow-through for the month plus 130 gallons; PENALTY: $21,280; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ken Russell; DOCKET NUMBER: 2012-0803-MSW-E; TCEQ ID NUMBER: RN106332471; LOCATION: 5244 State Highway 173 North, Devine, Medina County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW at the site; PENALTY: $3,750; STAFF ATTORNEY: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: River Chase Subdivision II, Ltd.; DOCKET NUMBER: 2012-0733-EAQ-E; TCEQ ID NUMBER: RN102791662; LOCATION: along the middle fork of the San Gabriel River at the extension of River Chase Boulevard, Georgetown, Williamson County; TYPE OF FACILITY: residential development/construction site; RULES VIOLATED: 30 TAC §213.4(a)(1) and TCEQ Agreed Order Docket Number 2005-1698-EAQ-E, Ordering Provisions Numbers 2.a. - 2.c., by failing to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Recharge Zone; PENALTY: $180,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, Post Office Box 13087, MC R-11, Austin, Texas 78711, (512) 339-2929.

TRD-201206371
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2012

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of

any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 22, 2013.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 22, 2013.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: ALMEDA PLAZA, INC. d/b/a Sunny's Food Store; DOCKET NUMBER: 2012-0944-PST-E; TCEQ ID NUMBER: RN102376563; LOCATION: 12170 Almeda Road, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,600; STAFF ATTORNEY: Cullen McMorrow, Litigation Division, MC 175, (512) 239-0607; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: FASS INC. d/b/a Bunnys CT; DOCKET NUMBER: 2012-0795-PST-E; TCEQ ID NUMBER: RN101871572; LOCATION: 1208 West Panola Street, Carthage, Panola County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(a) and (c)(1) and 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for review upon request by agency personnel; PENALTY: $8,882; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: FIRST GOLDEN JUBILEE ENT., INC. d/b/a SNS Food Mart; DOCKET NUMBER: 2012-1238-PST-E; TCEQ ID NUMBER: RN101739977; LOCATION: 12660 United States Highway 59 South, Shepherd, San Jacinto County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide proper corrosion protection for the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the piping associated with the USTs; and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,881; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-201206372
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 11, 2012

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Notice of Water Quality Applications

The following notices were issued on November 30, 2012 through December 7, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF KEMP has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010695001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located at 1298 Tolosa, approximately 0.8 mile west-southwest of the intersection of State Route 274 and U.S. Route 175, approximately 1.5 miles southwest of the City of Kemp in Kaufman County, Texas 75142.

TALL TIMBERS UTILITY COMPANY INC has applied for a renewal of TPDES Permit No. WQ0013000001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 445,000 gallons per day. The facility is located on Country Road 128, approximately 2,800 feet north and 6,500 feet west of the intersection of Highway 69 South and Farm-to-Market Road 2813 and 6.1 miles south-southwest of the City of Tyler in Smith County, Texas 75703.

ARCHDIOCESE OF GALVESTON HOUSTON has applied for a renewal of TPDES Permit No. WQ0014218001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located approximately

seven miles southeast of the intersection of Farm-to-Market Road 1488 and State Highway 249 at 19000 Circle Lake Drive, Pinehurst in Montgomery County, Texas 77362.

CHEMICALS INCORPORATED which proposes to operate the Bay City Site, an organic chemical manufacturing facility, has applied for a new permit, draft TPDES Permit No. WQ0004998000, to authorize the discharge of utility wastewaters and stormwater at a daily average flow of 108,000 gallons per day via Outfall 001. The facility is located at 8055 State Highway 60 South, approximately 5.2 miles south of Bay City, Matagorda County, Texas 77414., which proposes to operate the Bay City Site, an organic chemical manufacturing facility, has applied for a new permit, draft TPDES Permit No. WQ0004998000, to authorize the discharge of utility wastewaters and stormwater at a daily average flow of 108,000 gallons per day via Outfall 001. The facility is located at 8055 State Highway 60 South, approximately 5.2 miles south of Bay City, Matagorda County, Texas 77414.

CITY OF SKELLYTOWN has applied for a renewal of TPDES Permit No. WQ0010283001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day. The facility is located approximately 0.25 mile west of State Highway 152 and approximately 1.0 mile northwest of the intersection of Farm-to-Market Road 294 and State Highway 152 in Carson County, Texas 79080.

CHARTERWOOD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011410002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,650,000 gallons per day. The facility is located at 15820 Quill Drive, approximately 3.5 miles northwest of the intersection of State Highway 249 (West Montgomery Road) and Farm-to-Market Road 1960, on the south bank of Pillot Gully, in the City of Houston in Harris County, Texas 77046.

J AND S WATER COMPANY has applied for a renewal of TPDES Permit No. WQ0012382001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located approximately 3,300 feet west from the bridge where Rothwood Road crosses Spring Creek in Harris County, Texas 77389.

UNITED STRUCTURES OF AMERICA INC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0012765001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located approximately 1700 feet southwest from the intersection between Farm-to-Market Road 525 and Aldine Westfield Road at 1912 Buschong Street in Harris County, Texas 77039.

CITY OF MARQUEZ has applied to for a renewal of TPDES Permit No. WQ0013980001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 3,900 feet southeast of the intersection of U.S. Highway 79 and State Highway 7 in Leon County, Texas 77865.

AQUA TEXAS INC has applied to the TCEQ for a major amendment to TPDES Permit No. WQ0014181001 to authorize relocation of the point of discharge. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located at 22212 Stonebridge Crossing Lane, approximately 2,000 feet southeast of the intersection of Huffsmith-Kohrville Road and Mahaffey Road, Tomball in Harris County, Texas 77375.

IS ZEN CENTER has applied for a renewal of TPDES Permit No. WQ0014491001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 9550 Carraway Lane, 850 feet northeast of the northeast corner of the intersection of Dobbin-Hufsmith Road and Carraway Lane in Montgomery County, Texas 77354.

SOUTHWEST INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TCEQ Permit No. WQ0014786001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via non-public access subsurface low pressure dosing drainfields with a minimum area of 100,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 11553 Old Pearsall Road, approximately 2000 feet west of the intersection of Pearsall Road and Shepherd Road, northeast of the City of Atascosa in Bexar County, Texas 78002.

CITY OF MAGNOLIA has applied for a renewal of TPDES Permit No. WQ0014903001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 650,000 gallons per day. The facility is located at 30910 Nichols Sawmill Road on the northeast corner of the intersection of Arnold Branch and Nichols Sawmill Road, approximately 1.5 miles south of the intersection of Farm-to-Market Road 1774 and Farm-to-Market Road 1488 in Montgomery County, Texas 77355.

NORTHWEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 19 has applied for a renewal of TPDES Permit No. WQ0014908002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located at 25714 Steeple Canyon Road, approximately two (2) miles from the intersection of Highway (Hwy) 290 and Interstate Highway (IH) 35 accessible on Hwy 290 South, in Harris County, Texas 77389.

TIMBERCREST PARTNERS LLC has applied to renew TPDES Permit No. WQ0014912001 to authorize the discharge of treated wastewater at a volume not to exceed a daily average flow of 172,000 gallons per day. The facility is located at 25903 Elmfield Drive approximately 600 feet east of the intersection of Hufsmith Road and Kuykendahl Road in Harris County, Texas 77389.

5732 WOODARD PARTNERS LTD has applied for a new permit, proposed TPDES Permit No. WQ0015041001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 960,000 gallons per day. The facility will be located approximately 5,200 feet east from the intersection of Farm-to-Market Road 1486 and Sandy Hill Road, approximately 1,100 feet north of Sandy Hill Road in Montgomery County, Texas 77354.

CITY OF MERTENS has applied for a new permit, proposed TPDES Permit No. WQ0015055001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0013271001 which expired December 1, 2011. The facility is located approximately 1,300 feet east of Farm-to-Market Road 308 and 3,400 feet southeast of the intersection of Farm-to-Market Road 308 and State Highway 22 in Hill County, Texas 76666.

QUADVEST LP has applied for a new permit, proposed TPDES Permit No. WQ0015061001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The facility will be located 14,000 feet north-northeast of the intersection of Farm-to-Market Road 1010 and Willis Road in Liberty County, Texas 77327.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF CLUTE has applied for a minor amendment to the TPDES Permit No. WQ0010044001 for authorization to add the option of transporting the municipal wastewater treatment plant sludge to an off-site TCEQ permitted composting site. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located approximately 800 feet east of the intersection of Lake Jackson Road and State Highway 288 on the north side of the Missouri Pacific Railroad in the City of Clute in Brazoria County, Texas 77531.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TPDES Permit No. WQ0011203001, issued to Montgomery County Utility District No. 3, to correct the first page of the permit. The first page of the previously issued permit, issued December 15, 2009, was inadvertently used as the first page of the existing permit, issued August 20, 2012. The draft permit placed at the Charles B. Stewart West Branch Library, Reference Desk, 202 Bessie Price Owen Drive, Montgomery, Texas for public review included the correct first page. The correct first page includes the appropriate: issuance date, expiration date, address, facility location, and discharge route. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 15663 Highway 105 West in Montgomery County, Texas 77356.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201206394
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 12, 2012

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Texas Facilities Commission

Request for Proposals #303-3-20364

The Texas Facilities Commission (TFC), on behalf of the State Securities Board, the Comptroller of Public Accounts, the State Office of Administrative Hearings, the Texas Department of Agriculture, and the Railroad Commission of Texas, announces the issuance of Request for Proposals (RFP) #303-3-20364. TFC seeks a five (5) or ten (10) year lease of approximately 19,163 square feet of office space in San Antonio, Bexar County, Texas.

The deadline for questions is December 31, 2012 and the deadline for proposals is January 15, 2013 at 3:00 p.m. The award date is March 20, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103570.*

TRD-201206278
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 6, 2012

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Request for Proposals #303-4-20359

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) - Regional Administrative Offices, announces the issuance of Request for Proposals (RFP) #303-4-20359. TFC seeks a five (5) or ten (10) year lease of approximately 25,006 square feet of office space in Jefferson County, Texas.

The deadline for questions is January 18, 2013 and the deadline for proposals is January 25, 2013 at 3:00 p.m. The award date is February 22, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103587.*

TRD-201206307
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 7, 2012

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Request for Proposals #303-4-20360

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), the Department of Family and Protective Services (DFPS), the Department of State Health Services (DSHS), and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-4-20360. TFC seeks a five (5) or ten (10) year lease of approximately 29,979 square feet of office space in Jefferson County, Texas.

The deadline for questions is January 18, 2013 and the deadline for proposals is January 25, 2013 at 3:00 p.m. The award date is February 22, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103595.*

TRD-201206308

Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 7, 2012

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Request for Proposals #303-4-20361

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services, announces the issuance of Request for Proposals (RFP) #303-4-20361. TFC seeks a five (5) or ten (10) year lease of approximately 12,113 square feet of office space in Jefferson County, Texas.

The deadline for questions is January 18, 2013 and the deadline for proposals is January 25, 2013 at 3:00 p.m. The award date is February 22, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103611.*

TRD-201206344
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 10, 2012

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Request for Proposals #303-4-20362

The Texas Facilities Commission (TFC), on behalf of the Texas Health and Human Services Commission, the Department of Aging and Disability Services, and the Department of State Health Services, announces the issuance of Request for Proposals (RFP) #303-4-20362. TFC seeks a five (5) or ten (10) year lease of approximately 18,947 square feet of office space in Jefferson County, Texas.

The deadline for questions is January 18, 2013 and the deadline for proposals is January 25, 2013 at 3:00 p.m. The award date is February 22, 2013. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=103614.*

TRD-201206345
Kay Molina
General Counsel
Texas Facilities Commission
Filed: December 10, 2012

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of November 12, 2012 through November 16, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on December 10, 2012. The public comment period for this project will close at 5:00 p.m. on January 9, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Willacy County

Location: The project site is located on an undeveloped 44.6-acre tract that borders the Laguna Madre to the east and an existing Dredged Material Placement Area to the west, off of Matagorda Drive east of Port Mansfield, in Willacy County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Port Mansfield, Texas.

LATITUDE and LONGITUDE (NAD 83): Latitude: 26.5466 North; Longitude: -97.4180 West

Project Description: The applicant proposes to make facility improvements at the Laguna Point Recreation Area to provide the general public with recreational access to the Laguna Madre. Proposed work would include an 8-foot-wide by 500-foot-long fishing pier, a 20- by 20-foot dock, approximately 2,388 cubic yards of limestone fill for roadway improvements, six parking lots, a 1- by 253-foot footpath, 78.0 cubic yards of concrete for a 20- by 20-foot bathroom facility, and a 35- by 50-foot playscape. Approximately 1.1 acres of jurisdictional waters of the U.S. would be permanently filled for this project. Approximately 0.02 acre of vegetated sand flats and 1.08 acres of unvegetated sand flats, of which 0.7 is highly disturbed by an unimproved roadway would be permanently filled.

CMP Project No.: 13-0940

Type of Application: U.S.A.C.E. permit application #SWG-2012-00203 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the application listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201206331

Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: December 10, 2012

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Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project during the period of November 12, 2012 through November 16, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the General Land Office's web site. The notice was published on the web site on December 12, 2012. The public comment period for this project will close at 5:00 p.m. on January 11, 2013.

FEDERAL AGENCY ACTIONS:

Applicant: Endeavor Natural Gas, LP

Location: The project site is located in wetlands and adjacent to the Gulf Intracoastal Waterway (GIWW) and open water in Cedar Lakes. It continues for 5,463 linear feet from the proposed production platform to an existing production facility to the southeast, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Cedar Lakes West, Texas.

LATITUDE and LONGITUDE (NAD 83): Latitude: 28.838450; Longitude: -95.520826

Project Description: The applicant proposes to mechanically dredge 2,500 cubic yards of material from a 13,277-square-foot open water area, within Cedar Lakes, to a depth of 7 feet below mean low tide, plus 1-foot overdredge, to allow barge access for drilling a new well adjacent to Cedar Lakes. A 15-foot by 25-foot permanent access road and a 22,500-square-foot well pad will be constructed in uplands. A 3.5-inch pipeline will be bored under Cedar Lakes for a distance of 5,463 linear feet, extending from the new well pad to a spoil island, located approximately 265 feet west of an existing production platform. From the bore exit, the pipeline will be trenched through 40 linear feet of wetlands. The remaining 228 linear feet of pipeline will be jetted across a 684-square-foot-area, within an existing channel, located between State Tract 2 and Cedar Lakes, to an existing production facility. All temporary fills within jurisdictional wetlands will be restored within 180 days of the initial impact to wetlands. The applicant has avoided impacts to oyster reefs and permanent impacts to wetlands by boring most of the pipeline route.

CMP Project No.: 13-0983

Type of Application: U.S.A.C.E. permit application #SWG-2012-00895 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and Section 404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Andrea Finch, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at andrea.finch@glo.texas.gov. Comments should be sent to Ms. Finch at the above address or by email.

TRD-201206414
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: December 12, 2012

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective January 1, 2013.

The purpose of this amendment is to update the fee schedules in the current state plan by including fees for new services and by modifying fees for existing services. These rate actions are being taken to comply with §355.8085(1)(B), concerning Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners, under Title 1, Part 15, Chapter 355, Subchapter J, Division 5 of the Texas Administrative Code, which requires the Texas Health and Human Services Commission to review fees for individual services at least once every two years. After performing the required review, the Texas Health and Human Services Commission has determined that amendments to the fee schedule are appropriate.

Accordingly, the amendments will modify the fee schedules in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Ambulance Services

The proposed amendment is estimated to result in an additional annual cost of $(58,800) for federal fiscal year (FFY) 2013, consisting of $(34,868) in federal funds and $(23,932) in state general revenue. For FFY 2014, the estimated annual cost is $(82,489) consisting of $(48,413) in federal funds and $(50,718) in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201206375
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 11, 2012

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Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment to the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver program, a Medicaid waiver program operating under the authority of §1115 of the Social Security Act. The Texas Healthcare Transformation Quality Improvement Program waiver program is currently approved for the five-year period beginning December 12, 2011, and ending September 30, 2016. The proposed effective date for the amendment is May 1, 2013.

The Texas Healthcare Transformation Quality Improvement Program serves as the vehicle that allows the state to expand the Medicaid managed care delivery system while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

The 82nd Texas Legislature made 100 slots available for individuals with imminent risk for nursing facility placement to prevent institutionalization of individuals with disabilities who are currently in the community and waiting for Community Based Alternatives waiver services. The Department of Aging and Disability Services requested that the HHSC STAR+PLUS Program utilize 67 of the diversion slots, which leaves the Community Based Alternatives program with 33 slots. These slots are for persons who currently have no home and community based waiver services who face imminent risk of entering a nursing facility due to a catastrophic episode.

Examples of a catastrophic episode are:

*An individual is significantly dependent on a caregiver to remain in the community and the caregiver passes away or is suddenly no longer able to provide care.

*An individual has a community support system, but must suddenly relocate to where there is no support system.

*Any situation where an individual has a sudden occurrence that would cause imminent placement in a nursing facility and the individual cannot care for himself or herself.

*An individual is identified by Adult Protective Services as being at imminent risk of nursing facility placement.

The Texas Health and Human Services Commission is requesting that the waiver amendment be approved for the period beginning May 1, 2013, through September 30, 2016. The amendment does not impact budget neutrality.

To obtain copies of the proposed waiver amendment, interested parties may contact Meisha Scott by mail at Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-370, Austin, Texas 78708-5200; telephone (512) 491-1352; fax (512) 491-1957; or by email at Meisha.Scott@hhsc.state.tx.us.

TRD-201206399
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: December 12, 2012

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Orange	Solvay Specialty Polymers USA, L.L.C.	L06515	Orange	00	11/15/12
Pasadena	Air Products, L.L.C.	L06517	Pasadena	00	11/28/12
Throughout TX	Smartt Move, L.L.C.	L06516	Granbury	00	11/19/12
Throughout TX	Pro Oilfield Services, L.L.C.	L06518	Houston	00	11/28/12

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Arlington	USMD Hospital at Arlington	L05727	Arlington	12	11/14/12
Arlington	Heartplace, P.A.	L05855	Arlington	09	11/16/12
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	137	11/14/12
Bedford	Columbia North Hills Hospital dba Parc Plaza Imaging	L03455	Bedford	61	11/12/12
Cibolo	Sanjel USA, Inc.	L06419	Cibolo	02	11/14/12
Conroe	CHCA Conroe, L.P. dba Conroe Regional Medical Center	L01769	Conroe	91	11/20/12
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	117	11/12/12
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	53	11/12/12
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	192	11/27/12
Dallas	Dallas Cardiology Associates, P.A. dba Heartplace East	L04607	Dallas	57	11/19/12
Dallas	Louisiana/Texas Healthcare Management, L.L.C. dba South Hampton Community Hospital	L06259	Dallas	04	11/14/12
Denton	Columbia Medical Center of Denton Subsidiary, L.P. dba Denton Regional Medical Center	L02764	Denton	69	11/14/12
El Paso	Edward R. Assi, D.O., P.A.	L05695	El Paso	08	11/27/12
El Paso	Edward R. Assi, D.O., P.A.	L05695	El Paso	09	11/29/12
Euless	Texas Health Physicians Group dba PET/CT Center of Richardson	L06424	Euless	02	11/29/12
Fort Worth	Texas Health Harris Methodist Hospital Fort Worth	L01837	Fort Worth	134	11/12/12
Houston	Memorial Hermann Hospital System dba Memorial Hospital Memorial City	L01168	Houston	136	11/12/12
Houston	Institute of Biosciences and Technology	L04681	Houston	37	11/16/12
Houston	Tolunay Wong Engineers, Inc.	L04848	Houston	15	11/14/12
Houston	Interventional Cardiology Associates	L05294	Houston	13	11/16/12
Houston	Mukarram Ali Baig, M.D., P.A. dba Heart Care Center of Northwest Houston	L05539	Houston	15	11/28/12
La Porte	J. V. Industrial Company, Ltd.	L05785	La Porte	09	11/27/12
Lewisville	Cardiovascular Specialists, P.A.	L05507	Lewisville	21	11/19/12
Lubbock	Texas Tech University	L01536	Lubbock	98	11/20/12
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	101	11/12/12

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Orange	Tin, Inc. dba International Paper	L01029	Orange	64	11/27/12
Pampa	Hunting Titan, Ltd.	L04920	Pampa	22	11/27/12
Rosharon	Pioneer Wireline Services, L.L.C.	L06220	Rosharon	23	11/13/12
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	207	11/20/12
San Antonio	VHS San Antonio Partners, L.L.C. dba Baptist Health System	L00455	San Antonio	220	11/09/12
San Antonio	Trinity University	L01668	San Antonio	48	11/09/12
San Antonio	Burge-Martinez Consulting, Inc.	L05907	San Antonio	07	11/13/12
Sugar Land	E+ PET Imaging XI, L.P. dba PET Imaging of Sugar Land	L05858	Sugar Land	08	11/19/12
Throughout TX	Desert NDT, L.L.C. dba Midwest Inspection Services	L06462	Abilene	05	11/19/12
Throughout TX	Texas Department of Transportation	L00197	Austin	162	11/19/12
Throughout TX	Texas Department of Transportation	L00197	Austin	163	11/27/12
Throughout TX	Brazos Valley Inspection Services, Inc.	L02859	Bryan	73	11/19/12
Throughout TX	Alliance Geotechnical Group, Inc.	L05314	Dallas	23	11/27/12
Throughout TX	Mistras Group, Inc.	L06369	Deer Park	08	11/29/12
Throughout TX	Professional Service Industries, Inc.	L00931	Fort Worth	118	11/28/12
Throughout TX	T. Smith Inspection and Testing, L.L.C.	L05697	Fort Worth	11	11/26/12
Throughout TX	RLN Corporation	L06433	Hitchcock	04	11/29/12
Throughout TX	Varco, L.P.	L00287	Houston	133	11/28/12
Throughout TX	QC Laboratories, Inc.	L04750	Houston	27	11/15/12
Throughout TX	Marco Inspection Services, L.L.C.	L06072	Kilgore	41	11/19/12
Throughout TX	Hi-Tech Testing Service, Inc.	L05021	Longview	97	11/27/12
Throughout TX	J. Z. Russell Industries, Inc.	L06459	Nederland	04	11/20/12
Throughout TX	Big State X-Ray	L02693	Odessa	84	11/28/12
Throughout TX	Warrior Energy Services Corporation	L06342	Odessa	03	11/20/12
Throughout TX	Warrior Energy Services Corporation	L06342	Odessa	04	11/27/12
Tyler	The University of Texas Health Science Center at Tyler	L04117	Tyler	48	11/12/12
Webster	CHCA Clear Lake, L.P. dba Clear Lake Regional Medical Center	L01680	Webster	84	11/27/12

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Channelview	Xxtreme Pipe Services, L.L.C.	L02576	Channelview	29	11/26/12
Throughout TX	High Plains Underground Water Conservation District Number 1	L02598	Lubbock	23	11/15/12
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	117	11/28/12

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	William Craig, M.D., P.A.	L05378	San Antonio	10	11/19/12
Throughout TX	Reinhart and Associates, Inc.	L03189	Austin	47	11/28/12
Throughout TX	Aeroweld, Inc.	L06391	San Antonio	01	11/28/12

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201206280
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: December 7, 2012

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Texas Department of Insurance

Company Licensing

Application to change the name of ST. PAUL MEDICAL LIABILITY INSURANCE COMPANY to TRAVELERS CONSTITUTION STATE INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Hartford, Connecticut.

Application to change the name of ATHENA ASSURANCE COMPANY to THE TRAVELERS CASUALTY COMPANY, a foreign Fire and/or Casualty company. The home office is in Hartford, Connecticut.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201206346
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 10, 2012

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Company Licensing

Application for admission to the State of Texas by LUBA CASUALTY INSURANCE COMPANY, a foreign Fire and/or Casualty company. The home office is in Baton Rouge, Louisiana.

Application for admission to the State of Texas by NSS LIFE - ASSUMED NAME OF NATIONAL SLOVAK SOCIETY OF THE UNITED STATES OF AMERICA, a foreign Life, Accident and/or Health company. The home office is in McMurray, Pennsylvania.

Any objections must be filed with the Texas Department of Insurance, within 20 calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201206347
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 10, 2012

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Notice of Hearing

The commissioner of insurance will hold a public hearing under Docket No. 2749 at 9:30 a.m. on Tuesday, February 19, 2013, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas, to consider the Texas Land Title Association's (TLTA) request to increase title insurance premium rates by 6.5 percent. TLTA submitted the request on November 26, 2012, under Insurance Code §2703.202(b).

Insurance Code §2703.202 requires that the commissioner conduct a hearing as an Administrative Procedure Act rulemaking hearing, and then issue a final order 120 days after receiving the request. The commissioner will issue a final order no later than March 26, 2013. She will announce the decision in a later hearing, as required by §2703.202(j).

You may review TLTA's filing and the Office of Public Insurance Counsel's analysis by visiting the links at the bottom of this notice, or during regular business hours in the TDI Office of the Chief Clerk, 333 Guadalupe Street, Austin, Texas. For further information, or to request copies of the filing and analysis, please contact the Office of the Chief Clerk by phone at (512) 463-6327 or by email at ChiefClerk@tdi.texas.gov (refer to Petition No. T-1112-09).

If you wish to submit written comments, analyses, or other information related to the filing, please do so by 5:00 p.m. on Friday, February 15, 2013. You must provide two copies of your submission. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or email it to ChiefClerk@tdi.texas.gov. Send the other copy to J'ne Byckovski, Chief Actuary, Property and Casualty Section, P.O. Box 149104, Mail Code 105-5F, Austin, Texas 78714-9104; or email it to J'ne.Byckovski@tdi.texas.gov.

You may also present written or oral comments related to the filing at the hearing.

TRD-201206396
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: December 12, 2012

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Texas Lottery Commission

Instant Game Number 1489 "Blackjack Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1489 is "BLACKJACK TRIPLER." The play style is "beat score."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1489 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1489.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 2 DIAMOND CARD SYMBOL, 3 DIAMOND CARD SYMBOL, 4 DIAMOND CARD SYMBOL, 5 DIAMOND CARD SYMBOL, 6 DIAMOND CARD SYMBOL, 7 DIAMOND CARD SYMBOL, 8 DIAMOND CARD SYMBOL, 9 DIAMOND CARD SYMBOL, 10 DIAMOND CARD SYMBOL, JACK DIAMOND CARD SYMBOL, QUEEN DIAMOND CARD SYMBOL, KING DIAMOND CARD SYMBOL, ACE DIAMOND CARD SYMBOL, 2 CLUB CARD SYMBOL, 3 CLUB CARD SYMBOL, 4 CLUB CARD SYMBOL, 5 CLUB CARD SYMBOL, 6 CLUB CARD SYMBOL, 7 CLUB CARD SYMBOL, 8 CLUB CARD SYMBOL, 9 CLUB CARD SYMBOL, 10 CLUB CARD SYMBOL, JACK CLUB CARD SYMBOL, QUEEN CLUB CARD SYMBOL, KING CLUB CARD SYMBOL, ACE CLUB CARD SYMBOL, 2 HEART CARD SYMBOL, 3 HEART CARD SYMBOL, 4 HEART CARD SYMBOL, 5 HEART CARD SYMBOL, 6 HEART CARD SYMBOL, 7 HEART CARD SYMBOL, 8 HEART CARD SYMBOL, 9 HEART CARD SYMBOL, 10 HEART CARD SYMBOL, JACK HEART CARD SYMBOL, QUEEN HEART CARD SYMBOL, KING HEART CARD SYMBOL, ACE HEART CARD SYMBOL, 2 SPADE CARD SYMBOL, 3 SPADE CARD SYMBOL, 4 SPADE CARD SYMBOL, 5 SPADE CARD SYMBOL, 6 SPADE CARD SYMBOL, 7 SPADE CARD SYMBOL, 8 SPADE CARD SYMBOL, 9 SPADE CARD SYMBOL, 10 SPADE CARD SYMBOL, JACK SPADE CARD SYMBOL, QUEEN SPADE CARD SYMBOL, KING SPADE CARD SYMBOL, ACE SPADE CARD SYMBOL, $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000, and $30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1489 - 1.2D

PLAY SYMBOL	CAPTION
2 DIAMOND CARD SYMBOL	2DMD
3 DIAMOND CARD SYMBOL	3DMD
4 DIAMOND CARD SYMBOL	4DMD
5 DIAMOND CARD SYMBOL	5DMD
6 DIAMOND CARD SYMBOL	6DMD
7 DIAMOND CARD SYMBOL	7DMD
8 DIAMOND CARD SYMBOL	8DMD
9 DIAMOND CARD SYMBOL	9DMD
10 DIAMOND CARD SYMBOL	10DMD
JACK DIAMOND CARD SYMBOL	JDMD
QUEEN DIAMOND CARD SYMBOL	QDMD
KING DIAMOND CARD SYMBOL	KDMD
ACE DIAMOND CARD SYMBOL	ADMD
2 CLUB CARD SYMBOL	2CLB
3 CLUB CARD SYMBOL	3CLB
4 CLUB CARD SYMBOL	4CLB
5 CLUB CARD SYMBOL	5CLB
6 CLUB CARD SYMBOL	6CLB
7 CLUB CARD SYMBOL	7CLB
8 CLUB CARD SYMBOL	8CLB
9 CLUB CARD SYMBOL	9CLB
10 CLUB CARD SYMBOL	10CLB
JACK CLUB CARD SYMBOL	JCLB
QUEEN CLUB CARD SYMBOL	QCLB
KING CLUB CARD SYMBOL	KCLB
ACE CLUB CARD SYMBOL	ACLB
2 HEART CARD SYMBOL	2HRT
3 HEART CARD SYMBOL	3HRT
4 HEART CARD SYMBOL	4HRT
5 HEART CARD SYMBOL	5HRT
6 HEART CARD SYMBOL	6HRT
7 HEART CARD SYMBOL	7HRT
8 HEART CARD SYMBOL	8HRT
9 HEART CARD SYMBOL	9HRT
10 HEART CARD SYMBOL	10HRT
JACK HEART CARD SYMBOL	JHRT
QUEEN HEART CARD SYMBOL	QHRT
KING HEART CARD SYMBOL	KHRT
ACE HEART CARD SYMBOL	AHRT
2 SPADE CARD SYMBOL	2SPD
3 SPADE CARD SYMBOL	3SPD
4 SPADE CARD SYMBOL	4SPD
5 SPADE CARD SYMBOL	5SPD
6 SPADE CARD SYMBOL	6SPD
7 SPADE CARD SYMBOL	7SPD
8 SPADE CARD SYMBOL	8SPD

9 SPADE CARD SYMBOL	9SPD
10 SPADE CARD SYMBOL	10SPD
JACK SPADE CARD SYMBOL	JSPD
QUEEN SPADE CARD SYMBOL	QSPD
KING SPADE CARD SYMBOL	KSPD
ACE SPADE CARD SYMBOL	ASPD
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $5.00, $6.00, $10.00, $15.00, or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, or $100.

H. High-Tier Prize - A prize of $1,000 or $30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1489), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1489-0000001-001.

K. Pack - A Pack of "BLACKJACK TRIPLER" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. There will be no breaks between the Tickets in a Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK TRIPLER" Instant Game No. 1489 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "BLACKJACK TRIPLER" Instant Game is determined once the latex on the Ticket is scratched off to expose 26 (twenty-six) Play Symbols. The player adds the 2 cards in each YOUR HAND position. If the player's total in any YOUR HAND position is higher than the total in the DEALER'S HAND, the player wins the PRIZE for that HAND. If any YOUR HAND position adds up to "21", the player wins TRIPLE the PRIZE for that HAND. J, Q, K = 10. A = 11. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 26 (twenty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 26 (twenty-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 26 (twenty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 26 (twenty-six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or prize symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. On winning and Non-Winning Tickets, the top cash prize of $30,000 and the $1,000 prize will each appear at least once, except on Tickets winning eight (8) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a prize amount will not appear more than two (2) times, except as required by the prize structure to create multiple wins.

G. The Ace is considered high and has a value of 11.

H. The Jack, Queen and King have a value of 10.

I. All Play Symbols on a Ticket will be unique (rank and suit).

J. There will be no ties between the total value of the DEALER'S HAND and the total value of any of the YOUR HANDS.

K. The total value of "21" in the YOUR HANDS wins triple the PRIZE shown, and will win as per the prize structure.

L. A total value of "21" will never appear within any HAND on a Non-Winning Ticket.

M. On Non-Winning Tickets, the total value of each YOUR HANDS will never be greater than or equal to the total of the DEALER'S HAND.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK TRIPLER" Instant Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $20.00, $30.00, $50.00, or $100, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, or $100 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BLACKJACK TRIPLER" Instant Game prize of $1,000 or $30,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BLACKJACK TRIPLER" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BLACKJACK TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BLACKJACK TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,200,000 Tickets in the Instant Game No. 1489. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1489 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	806,400	8.93
$5	422,400	17.05
$6	172,800	41.67
$10	230,400	31.25
$15	19,200	375.00
$20	38,400	187.50
$30	12,210	589.68
$50	6,300	1,142.86
$100	3,000	2,400.00
$1,000	18	400,000.00
$30,000	8	900,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.21. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1489 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1489, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201206348
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 10, 2012

♦ ♦ ♦

Instant Game Number 1493 "Gimme 5"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1493 is "GIMME 5." The play style is "key symbol match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1493 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1493.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - The printed data under the latex on the front of the Instant Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in symbol font in black ink in positive except for dual-image games. The possible RED and BLACK Play Symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20. The possible BLACK Play Symbols are: $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000, and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1493 - 1.2D

PLAY SYMBOL	CAPTION
1 (BLACK)	ONE
2 (BLACK)	TWO
3 (BLACK)	THR
4 (BLACK)	FOR
5 SYMBOL (BLACK)	WIN
6 (BLACK)	SIX
7 (BLACK)	SVN
8 (BLACK)	EGT
9 (BLACK)	NIN
10 (BLACK)	TEN
11 (BLACK)	ELV
12 (BLACK)	TLV
13 (BLACK)	TRN
14 (BLACK)	FTN
16 (BLACK)	SXN
17 (BLACK)	SVT
18 (BLACK)	ETN
19 (BLACK)	NTN
20 (BLACK)	TWY
$5.00 (BLACK)	FIVE$
$10.00 (BLACK)	TEN$
$15.00 (BLACK)	FIFTN
$20.00 (BLACK)	TWENTY
$50.00 (BLACK)	FIFTY
$100 (BLACK)	ONE HUND
$250 (BLACK)	TWO FTY
$500 (BLACK)	FIV HUN
$1,000 (BLACK)	ONE THOU
$50,000 (BLACK)	50 THOU
1 (RED)	ONE
2 (RED)	TWO
3 (RED)	THR
4 (RED)	FOR
5 SYMBOL (RED)	DBL
6 (RED)	SIX
7 (RED)	SVN
8 (RED)	EGT
9 (RED)	NIN
10 (RED)	TEN
11 (RED)	ELV
12 (RED)	TLV
13 (RED)	TRN
14 (RED)	FTN
16 (RED)	SXN
17 (RED)	SVT
18 (RED)	ETN
19 (RED)	NTN
20 (RED)	TWY

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, $15.00, or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100, $250, or $500.

H. High-Tier Prize - A prize of $1,000 or $50,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1493), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1493-0000001-001.

K. Pack - A Pack of "GIMME 5" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other book will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GIMME 5" Instant Game No. 1493 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "GIMME 5" Instant Game is determined once the latex on the Ticket is scratched off to expose 26 (twenty-six) Play Symbols. If a player reveals a BLACK "5" Play Symbol, the player wins the PRIZE shown. If a player reveals a RED "5" Play Symbol, the player wins DOUBLE the PRIZE shown! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 26 (twenty-six) Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have exactly 26 (twenty-six) Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 26 (twenty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 26 (twenty-six) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or prize symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to thirteen (13) times.

D. On winning and Non-Winning Tickets, the top cash prizes of $50,000 and $1,000 will each appear at least once, except on Tickets winning thirteen (13) times.

E. On winning Tickets, a non-winning prize amount will not match a winning prize amount.

F. On all Tickets, a prize amount will not appear more than 3 times, except as required by the prize structure to create multiple wins.

G. This Ticket consists of thirteen (13) Play Symbols and thirteen (13) Prize Symbols.

H. Play symbols will not appear more than once on any one ticket, except where required by a multiple win.

I. Non-winning Play Symbols will not equal the corresponding prize symbol (i.e., 10 will not appear with $10).

2.3 Procedure for Claiming Prizes.

A. To claim a "GIMME 5" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100, $250, or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GIMME 5" Instant Game prize of $1,000 or $50,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GIMME 5" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "GIMME 5" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "GIMME 5" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 7,200,000 Tickets in the Instant Game No. 1493. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1493 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	944,000	7.63
$10	672,000	10.71
$15	176,000	40.91
$20	64,000	112.50
$50	70,740	101.78
$100	25,860	278.42
$250	4,020	1,791.04
$500	2,760	2,608.70
$1,000	111	64,864.86
$50,000	10	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1493 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Instant Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1493, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201206358
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 11, 2012

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Instant Game Number 1510 "$75,000 Cashword-O-Rama"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1510 is "$75,000 CASHWORD-O-RAMA." The play style is "crossword."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1510 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1510.

A. Display Printing - That area of the Instant Game Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the Ticket. Each Play Symbol is printed in symbol font in black ink in positive. The possible Black Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, and blackened square. The possible Red Play Symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z.

D. Play Symbol Caption - The small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol Captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1510 - 1.2D

PLAY SYMBOL	CAPTION
A (BLACK)	
B (BLACK)	
C (BLACK)	
D (BLACK)	
E (BLACK)	
F (BLACK)	
G (BLACK)	
H (BLACK)	
I (BLACK)	
J (BLACK)	
K (BLACK)	
L (BLACK)	
M (BLACK)	
N (BLACK)	
O (BLACK)	
P (BLACK)	
Q (BLACK)	
R (BLACK)	
S (BLACK)	
T (BLACK)	
U (BLACK)	
V (BLACK)	
W (BLACK)	
X (BLACK)	
Y (BLACK)	
Z (BLACK)	
[redacted] SYMBOL (BLACK)	
A (RED)	
B (RED)	
C (RED)	
D (RED)	
E (RED)	
F (RED)	
G (RED)	
H (RED)	
I (RED)	
J (RED)	
K (RED)	
L (RED)	
M (RED)	
N (RED)	
O (RED)	
P (RED)	
Q (RED)	
R (RED)	
S (RED)	

T (RED)	
U (RED)	
V (RED)	
W (RED)	
X (RED)	
Y (RED)	
Z (RED)	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00, or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $40.00, $50.00, $100, $200, or $500.

H. High-Tier Prize - A prize of $1,000, $5,000, or $75,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Ticket.

J. Pack-Ticket number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1510), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1510-0000001-001.

K. Pack - A Pack of "$75,000 CASHWORD-O-RAMA" Instant Game Tickets contain 075 Tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Ticket - A Ticket which is not programmed to be a winning Ticket or a Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$75,000 CASHWORD-O-RAMA" Instant Game No. 1510 Ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Instant Ticket. A prize winner in the "$75,000 CASHWORD-O-RAMA" Instant Game is determined once the latex on the Ticket is scratched off to expose up to 144 (one hundred forty-four) possible Play Symbols. The player must scratch and reveal all the YOUR 19 LETTERS Play Symbols in the play area. The player must use the YOUR 19 LETTERS Play Symbols to form words in the CASHWORD-O-RAMA puzzle and BONUS WORDS A, B, C and D. The player will continue until all of the letters in the YOUR 19 LETTERS play area have been scratched in the CASHWORD-O-RAMA puzzle and all of the BONUS WORDS A, B, C and D puzzle that match those in the YOUR 19 LETTERS play area. If a player reveals three (3) or more words in the CASHWORD-O-RAMA puzzle, the player wins the prize in the PRIZE LEGEND. If a player completely reveals a RED word, the player wins DOUBLE the prize in the PRIZE LEGEND. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the CASHWORD-O-RAMA and BONUS WORDS A, B, C and D puzzles. Only letters within the CASHWORD-O-RAMA puzzle and BONUS WORDS A, B, C and D play areas that are matched with the YOUR 19 LETTERS Play Symbols can be used to form a complete "word." Words within words are not eligible for a prize. For example, the Play Symbols "S, T, O, N, E" must be revealed for this to count as one complete "word." TON, ONE or any other portion of the sequence of STONE would not count as a complete "word." A complete "word" must contain at least three letters. There will be only one prize in each puzzle. BONUS WORDS do not add to the number of words required for the CASHWORD-O-RAMA PRIZE LEGEND. Each puzzle is played separately. If a player reveals A COMPLETED RED WORD IN THE CASHWORD-O-RAMA PUZZLE, the player wins DOUBLE the PRIZE. In the BONUS WORDS (A, B, C, D) play areas: If a player completely reveals a BLACK BONUS WORD, the player wins $10 instantly. If a player completely reveals a RED BONUS WORD, the player wins $30 instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. One hundred forty-four (144) possible Play Symbols must appear under the Latex Overprint on the front portion of the Ticket;

2. Play Symbols in this game do not have Play Symbol Captions. Crossword and Bingo style games do not typically have Play Symbol Captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The Ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Ticket;

8. The Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The Ticket must not be counterfeit in whole or in part;

10. The Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Ticket must not have been stolen, nor appear on any list of omitted Tickets or non-activated Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket number must be right side up and not reversed in any manner;

13. The Ticket must be complete and not miscut, and have 144 (one hundred forty-four) possible Play Symbols under the Latex Overprint on the front portion of the Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket number on the Ticket;

14. The Serial Number of an apparent winning Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Tickets, and a Ticket with that Serial Number shall not have been paid previously;

15. The Ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 144 (one hundred forty-four) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 144 (one hundred forty-four) possible Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket number must be printed in the Pack-Ticket number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have identical play data, spot for spot.

B. Each grid will contain exactly the same amount of letters.

C. Each grid will contain exactly the same amount of words.

D. No duplicate words on a Ticket.

E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.

F. All words will contain a minimum of 3 letters.

G. All words will contain a maximum of 9 letters.

H. No duplicate Play Symbols in the YOUR 19 LETTERS play area.

I. There will be a minimum of three (3) vowels in the YOUR 19 LETTERS. Vowels are considered to be A, E, I, O and U.

J. At least fifteen (15) letters in the YOUR 19 LETTERS will open at least one letter in the (13x13) cashword grid and BONUS WORDS A, B, C and D.

K. At least one Play Symbol in the BONUS WORDS A, B, C and D area will match to at least one letter in the YOUR 19 LETTERS.

L. Vowels will appear randomly in the YOUR 19 LETTERS area.

M. The presence or absence of any letter or combination of letters in the YOUR 19 LETTERS will not be indicative of a winning or Non-Winning Ticket.

N. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally in the YOUR 19 LETTERS area.

O. The completed RED words will win only as dictated by the prize structure.

P. On Non-Winning Tickets, the (13x13) CASHWORD grid will have at least 2 completed words.

Q. There will be no non-winning grid containing a RED word completely revealed in the CASHWORD grid.

R. On winning Tickets when only one or more BONUS WORDS A, B, C and D are completed, only one completed word will be revealed in the (13x13) CASHWORD grid.

S. The (13x13) CASHWORD grid will only have one (1) RED word.

T. The (13x13) CASHWORD grid will not have more than 10 words completed.

U. The BONUS WORDS (A, B, C and D) will win as indicated by the prize structure.

V. There will always be two (2) BLACK Bonus grids (A and D) and two (2) RED Bonus grids (B and C).

2.3 Procedure for Claiming Prizes.

A. To claim a "$75,000 CASHWORD-O-RAMA" Instant Game prize of $5.00, $10.00, $20.00, $30.00, $40.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the Ticket in the space designated on the Ticket and present the winning Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a $30.00, $40.00, $50.00, $100, $200, or $500 Ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "$75,000 CASHWORD-O-RAMA" Instant Game prize of $1,000, $5,000, or $75,000, the claimant must sign the winning Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Ticket for that prize upon presen-

tation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$75,000 CASHWORD-O-RAMA" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Texas Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "$75,000 CASHWORD-O-RAMA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "$75,000 CASHWORD-O-RAMA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Tickets ordered. The number of actual prizes available in a game may vary based on number of Tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game Ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game Ticket in the space designated therefor, a Ticket shall be owned by the physical possessor of said Ticket. When a signature is placed on the back of the Ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Ticket in the space designated therefore. If more than one name appears on the back of the Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game Tickets and shall not be required to pay on a lost or stolen Instant Game Ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 Tickets in the Instant Game No. 1510. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1510 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,344,000	7.50
$10	940,800	10.71
$20	268,800	37.50
$30	134,400	75.00
$40	84,000	120.00
$50	52,836	190.78
$100	12,600	800.00
$200	1,680	6,000.00
$500	1,680	6,000.00
$1,000	168	60,000.00
$5,000	20	504,000.00
$75,000	14	720,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.55. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1510 without advance notice, at which point no further Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game Ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1510, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201206359
Bob Biard
General Counsel
Texas Lottery Commission
Filed: December 11, 2012

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Texas Low-Level Radioactive Waste Disposal Compact Commission

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

US Environmental Protection Agency (TLLRWDCC #1-0022-00)

401 Methodist Building

1060 Chapline Street

Wheeling, WV 26003

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by January 3, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201206272
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: December 6, 2012

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

Exelon Generation Company (TLLRWDCC #1-0023-00)

4300 Winfield Road

Warrenville, IL 60555

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by January 3, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201206273
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: December 6, 2012

♦ ♦ ♦

Notice of Receipt of Application for Importation of Waste and Import Agreement

Please take notice that, pursuant to Texas Low-Level Radioactive Waste Disposal Compact Commission rule 31 TAC §675.23, the Compact Commission has received an application for and a proposed agreement for import for disposal of low-level radioactive waste from:

PG&E Company (TLLRWDCC #1-0024-00)

P.O. Box 56, MC 104/5/13B

Avila Beach, CA 93424

The application is being placed on the Compact Commission web site, www.tllrwdcc.org, where it will be available for inspection and copying.

Comments on the application are due to be received by January 3, 2013. Comments should be mailed to:

Texas Low-Level Radioactive Waste Disposal Compact Commission

3616 Far West Blvd., Suite 117 #294

Austin, Texas 78731

Comments may also be submitted via email to: administration@tllrwdcc.org.

TRD-201206274
Audrey Ferrell
Administrator
Texas Low-Level Radioactive Waste Disposal Compact Commission
Filed: December 6, 2012

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Acceptance of Land Donation - Brazoria County

Approximately 480 Acres at Christmas Bay Coastal Preserve

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of a tract of land of approximately 480 acres in Brazoria County adjacent to the Christmas Bay Coastal Preserve. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Acceptance of Land Donation - Anderson County

Approximately 1.55 Acres at Gus Engeling Wildlife Management Area

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of a tract of land of approximately 1.55 acres in Anderson County for addition to Gus Engeling Wildlife Management Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Acceptance of Land Donation - Yoakum County

Approximately 1000 Acres at Yoakum Dunes Preserve

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider accepting a donation of one or more tracts of land of totaling approximately 1000 acres in Yoakum County for addition to Yoakum Dunes Preserve. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - Nacogdoches County

Approximately 50 Acres at Alazan Bayou Wildlife Management Area

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of a tract of land of approximately 50 acres in Nacogdoches County for addition to Alazan Bayou Wildlife Management Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - Hemphill County

Approximately 350 Acres at Gene Howe Wildlife Management Area

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of a tract of land of approximately 350 acres in Hemphill County for addition to Gene Howe Wildlife Management Area. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Land Acquisition - Stephens County

Approximately 250 Acres at Palo Pinto Mountains State Park

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the acquisition of a tract of land of approximately 250 acres in Stephens County for addition to Palo Pinto Mountains State Park. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Sale of Land - Bastrop County

Approximately One Half Acre at Bastrop State Park

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider the sale of approximately one-half acre of land at Bastrop State Park to correct a boundary discrepancy. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Transfer of Land - Bastrop County

Approximately One Half Acre at Bastrop State Park

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider exchanging a tract of land of approximately 1 acres for a tract of approximately 3.4 acres to correct a boundary discrepancy. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Request for Deed Modification - Harris County

Authorization of Pipeline Easement at Lake Houston Wilderness Park

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider the granting of a deed modification to the City of Houston to allow the directional drilling of a 24" hydrocarbon transmission pipeline across Lake Houston Wilderness Park in Harris and Montgomery Counties. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Request for Pipeline Easement - Parker County

Pipeline Crossing Lake Mineral Wells Trailway

In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorization of a Pipeline Easement for an eight inch gathering line to be directionally drilled under Lake Mineral Wells Trailway. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

Request for Tramway Easement - El Paso County

Modification of FAA Tramway at Franklin Mountains State Park In a meeting on January 24, 2013, the Texas Parks and Wildlife Commission (the Commission) will consider authorization of a Tramway Easement to replace the lower terminal of an existing tramway owned and operated by the Federal Aviation Agency. At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201206395
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 12, 2012

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 4, 2012, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Ultra Communications, LLC for State-Issued Certificate of Franchise Authority, Project Number 41012.

The requested CFA service area consists of Sealy, Angleton, North Cleveland, Tuscola, Hallettsville, Bellville, Danbury, Kingsville, Bailey's Prairie, Weimar, Hempstead, Bevil Oaks, Joaquin, Bronte, Buffalo Gap, Roscoe, Sweetwater, Robert Lee, Cleveland and the unincorporated areas in Liberty and San Jacinto Counties as highlighted on map 1 of the application, Sour Lake and the unincorporated areas of Hardin County as highlighted on map 2 of the application, China and the unincorporated areas in Hardin and Jefferson Counties as highlighted on map 3 of the application, Woodville and the unincorporated areas in Tyler County as highlighted on map 4 of the application, Jasper and the unincorporated areas in Jasper County as highlighted on map 5 of the application, Giddings and the unincorporated areas in Lee County as highlighted on map 6 of the application, LaGrange and the unincorporated areas in Fayette County as highlighted on map 7 of the application, Schulenburg and the unincorporated areas in Fayette County as highlighted on map 8 of the application, Blackwell and the unincorporated areas in Coke County as highlighted on map 9 of the application, Merkel and the unincorporated areas in Taylor County as highlighted on map 10 of the application, and the unincorporated areas in Tom Green County as highlighted on map 11 of the application.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 41012.

TRD-201206335
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 6, 2012, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Broadband Fiber, LLC for a Service Provider Certificate of Operating Authority, Docket Number 41023.

Applicant intends to provide data only - facilities-based telecommunications services.

It appears that Applicant seeks to provide service within portions of the City of Houston.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than December 28, 2012. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. All comments should reference Docket Number 41023.

TRD-201206341
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

♦ ♦ ♦

Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on December 5, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Free Mobile, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline. Docket Number 41016.

The Application: Free Mobile seeks ETC designation solely to provide wireless Lifeline service to qualifying Texas households and will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. The Company requests ETC designation in the requested wire centers of the non-rural ILECs AT&T Texas, Verizon and Central Telephone Co. of Texas d/b/a CenturyLink. A list of requested wire centers is attached to the application as Exhibit 5. The Company is a reseller of commercial mobile radio service (CMRS) and provides prepaid wireless telecommunications services to consumers by using the Sprint Spectrum, L.P. and AT&T Wireless networks. The proposed effective date of this application is January 20, 2013.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by January 10, 2013. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 41016.

TRD-201206337
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on December 5, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of FedLink Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline. Docket Number 41017.

The Application: FedLink seeks ETC designation solely to provide wireless Lifeline service to qualifying Texas households and will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. The Company requests ETC designation in the requested wire centers of the non-rural ILECs AT&T Texas, Verizon and Central Telephone Co. of Texas d/b/a CenturyLink. A list of requested wire centers is attached to the application as Exhibit 5. The Company is a reseller of commercial mobile radio ser-

vice (CMRS) and provides prepaid wireless telecommunications services to consumers by using the Sprint Spectrum, L.P. network. The proposed effective date of this application is January 20, 2013.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by January 10, 2013. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 41017.

TRD-201206338
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on December 5, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Low Income Programs to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Telrite Corporation d/b/a Life Wireless for Designation as an Eligible Telecommunications Carrier in the State of Texas on a Wireless Basis (Low Income Only). Docket Number 41018.

The Application: Life Wireless seeks ETC status sole for the purpose of providing the services supported by and participating in the Low Income Programs of the Universal Service Fund. The Company will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. The Company requests ETC designation in the requested wire centers of the non-rural incumbent local exchange carrier AT&T Texas, Verizon and Central Telephone Co. of Texas d/b/a CenturyLink. A list of requested wire centers is attached to the application as Exhibit A-1. The Company is a common carrier and reseller of commercial mobile radio service (CMRS). Life Wireless will provide wireless service throughout its service area through resale. Its underlying carrier is AT&T Texas. The proposed effective date of this application is January 20, 2013.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by January 10, 2013. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 41018.

TRD-201206339
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on December 5, 2012, for designation as an eligible telecommunications carrier (ETC) in the State of Texas for the limited purpose of offering Lifeline Service to qualified households, pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Blue Jay Wireless, LLC for Designation as an Eligible Telecommunications Carrier in the State of Texas for the Limited Purpose of Offering Lifeline. Docket Number 41019.

The Application: Blue Jay Wireless seeks ETC designation solely to provide wireless Lifeline service to qualifying Texas households and will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas. The Company requests ETC designation in the requested wire centers of the non-rural ILECs AT&T Texas, Verizon and Central Telephone Co. of Texas d/b/a CenturyLink. A list of requested wire centers is attached to the application as Exhibit C. The Company is a reseller of commercial mobile radio service and provides prepaid wireless telecommunications services to consumers by using the Verizon Wireless and Sprint Spectrum, L.P. networks. The proposed effective date of this application is January 20, 2013.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by January 10, 2013. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989 to reach the commission's toll-free number (888) 782-8477. All comments should reference Docket Number 41019.

TRD-201206340
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 4, 2012, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Barclays Bank PLC for Retail Electric Provider Certification, Docket Number 41014.

Applicant's requested service area is defined by customers.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Docket Number 41014.

TRD-201206336

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Notice of Filing to Withdraw Services Pursuant to P.U.C. Substantive Rule §26.208(h)

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services pursuant to P.U.C. Substantive Rule §26.208(h).

Docket Title and Number: Tariff Filing of Verizon Southwest to Discontinue Regional Value Price Guarantee in its Texas General Exchange Tariff TXG - Docket Number 40984.

The Application: On November 28, 2012, pursuant to P.U.C. Substantive Rule §26.208(h), Verizon Southwest (Verizon SW or applicant) filed an application with the commission to discontinue the offering of Regional Value Price Guarantee a/k/a Freedom Value Price guarantee. Verizon SW explained that it is discontinuing this service offering to new customers in order to gain pricing flexibility in its products and avoid guaranteed lifetime prices. If a new customer desires this type of service, Verizon SW stated that a customer could get a bundle with the same features from the Verizon discount plan. Verizon SW also stated that existing residential customers may continue to subscribe to the service, but will not be permitted to make moves, changes or additions. Verizon SW proposed an effective date of March 16, 2013. The proceedings were docketed and suspended on November 29, 2012, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Docket Number 40984.

TRD-201206388
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2012

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on December 7, 2012, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Colorado Valley Telephone Cooperative, Inc.'s Application for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and Public Utility Regulatory Act Section 53, Subchapter G, Tariff Control Number 41027.

The Application: Colorado Valley Telephone Cooperative, Inc. (Colorado Valley or applicant) filed an application for minor rate change to increase monthly Residential and Business Local Exchange Access Line Service rates for all its customers. Concurrently with the increase, Colorado Valley proposes to eliminate its Touch-Tone charge of $0.75 which will offset the local rate increase. Touch-Tone service will be incorporated as a standard provision of all local access lines. Colorado Valley proposed an effective date of January 1, 2013. The estimated annual revenue increase recognized by the applicant is $93,980 of its gross annual intrastate revenues. The applicant has 5,753 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by December 31, 2012, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by December 31, 2012. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free (800) 735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 41027.

TRD-201206389
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 11, 2012

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Request for Proposals to Provide Technical Consulting Services

RFP Number 473-13-00137

The Public Utility Commission of Texas (PUCT or Commission) is issuing a Request for Proposals for analyst services to study the issues and effects of Entergy Texas, Inc. (ETI) leaving the Entergy System Agreement and joining the MidWest Independent System Operator (MISO).

Scope of Work:

The Contractor shall provide technical consulting services related to the compliance proceeding PUCT Docket 40979 concerning the membership of ETI in a regional transmission organization and ETI's participation in and orderly transition out of the Entergy System Agreement (ESA).

The ESA Transition Study shall include, but not be limited to, identification of options and recommendations for achieving an orderly transition out of the ESA and integration into MISO including solving operational issues, economic impacts, contract issues and optimal exit timing including what steps must be taken by ETI.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

purchasing@puc.texas.gov

RFP documentation is also located on the PUCT website at http://www.puc.state.tx.us/agency/about/procurement/Default.aspx.

Deadline for proposal submission is 3:00 p.m. CT on Thursday, January 10, 2013.

TRD-201206342
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 10, 2012

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Railroad Commission of Texas

Alternative Energy Division Forms (LP-Gas, CNG, LNG, and AFRED)

The Railroad Commission of Texas (Commission) adopts the Alternative Energy Division forms as part of four rule adoptions published in this issue of the *Texas Register*. The adoptions include various amendments, repeals, and new rules in 16 TAC Chapter 9, concerning LP-Gas Safety Rules; 16 TAC Chapter 13, concerning Regulations for Compressed Natural Gas (CNG); 16 TAC Chapter 14, concerning Regulations for Liquefied Natural Gas (LNG); and 16 TAC Chapter 15, concerning Alternative Fuels Research and Education Division. The adoptions update references to the Alternative Energy Division and consolidate the division's administrative forms into one rule per chapter. In particular, §§9.3, 13.4, 14.2010, and 15.5 include new tables listing the form numbers, titles, creation or revision dates, and the applicable rules in each chapter where the forms are discussed.

The Commission received no comments on the proposed forms, which were published in the September 28, 2012, issue of the *Texas Register* (37 TexReg 7811).

One form, Form CR-3, Dealer Rebate Assignment Form, referenced in 16 TAC §15.5, relating to AFRED Forms, was adopted with changes deleting the word "Propane" from the title of the form and making conforming changes to make the form usable by applicants for rebates related to all eligible alternative fuels, including propane. The revised form is included with this notice. For further information, call Kellie Martinec at (512) 475-1295.

The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

RAILROAD COMMISSION OF TEXAS ALTERNATIVE ENERGY DIVISION

DEALER REBATE ASSIGNMENT FORM

ALTERNATIVE-FUELED EQUIPMENT INFORMATION

I,_____, hereby assign my consumer rebate to the dealer named below.
(name of applicant)

I understand the Commission may change the rebate amount at any time. If the Commission changes the amount, I am not responsible for any difference between the rebate amount in effect on the date I sign this form and the date my application is approved. I have received a copy of the Railroad Commission rules describing the Consumer Rebate Program.

Installation Location (Physical Location, no P.O. Box):
City / State / Zip:

APPLICANT INFORMATION

Applicant Signature:	Date:
Address:	
City / State / Zip:	Daytime Phone:

ASSIGNED TO:

COMPANY INFORMATION

Licensed Company Name:															
RRC License Number:															
State Tax Identification Number Enter one number per box:		-			-							-			
Mailing Address:															
City / State / Zip:													Daytime Phone:		
Signature of licensee, active company representative or operations supervisor on file with the LP-Gas Operations section of the Alternative Energy Division.													Date:		
Printed Name:															

Please fax to: 512-936-4196
or return to: RAILROAD COMMISSION OF TEXAS
ALTERNATIVE ENERGY DIVISION (CONSUMER REBATE PROGRAM)
P.O. BOX 12967
AUSTIN, TEXAS 78711-2967

CR-3
Revised 7/2012

Issued in Austin, Texas, on December 4, 2012.

TRD-201206268
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Filed: December 6, 2012

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Texas A&M University System Board of Regents

Announcement of Finalist for the Position of President of Texas A&M University-Texarkana

Pursuant to §552.123, Texas Government Code, the following candidate is the finalist for the position of President of Texas A&M University-Texarkana. Upon the expiration of 21 days, final action is to be taken by the Board of Regents of Texas A&M University System.

Dr. Emily Fourmy Cutrer

TRD-201206390
Vickie Spillers
Executive Director
Texas A&M University System Board of Regents
Filed: December 12, 2012

♦ ♦ ♦

Texas Department of Transportation

Public Notice - Advertising in Texas Department of Transportation Travel Literature and *Texas Highways* Magazine, in Print and in Digital or Online Assets

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, as well as encouraging travel to and within the State of Texas, and to include paid advertising in such literature. Texas Administrative Code, Title 43, §23.10 and §23.29, describes the policies governing advertising in department travel literature and in *Texas Highways* magazine, both in print and in digital or online; lists acceptable and unacceptable subjects for advertising in department travel literature and the magazine; and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's contact list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880; fax (512) 486-5879 or email to Lupe.Valdez@txdot.gov.

The department is now accepting advertising for the 2014 edition of the *Texas State Travel Guide,* scheduled to be printed in late 2013 and available in January 2014. The *Texas State Travel Guide* is designed to encourage readers to explore and travel to and within the state of Texas. The guide lists cities and towns, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide may also include sections listing Texas lakes, state parks, and state and national forests, along with hunting and fishing information. The State of Texas distributes this travel guide to travelers in Texas and to those who request information while planning to travel in Texas.

Media kits for the 2014 *Texas State Travel Guide,* 2013/2014 *Texas Highways* and 2013/2014 *Texas Highways Events Calendar* are now available.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted on a first-come first-served basis. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 22, 2013. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The department continues to accept advertising for all quarterly issues of the *Texas Highways Events Calendar,* beginning with the Summer 2013 calendar. The *Texas Highways Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Highways Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The Summer 2013 calendar lists events scheduled for June, July, and August 2013. The Fall 2013 calendar lists September, October, and November 2013 events. The Winter 2013-2014 calendar lists December 2013, January 2014, and February 2014 events; and the Spring 2014 calendar lists events scheduled for March 2014, April 2014, and May 2014.

The advertising due dates for the *Texas Highways Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Highways Events Calendar* is February 13, 2013 for the Summer 2013 issue; May 14, 2013, for the Fall 2013 issue; August 13, 2013, for the Winter 2013-2014 issue; and November 12, 2013 for the Spring 2014 issue. The deadline for accepting materials for the *Texas Highways Events Calendar* is February 27, 2013 for the Summer 2013 issue; May 28, 2013, for the Fall 2013 issue; August 26, 2013, for the Winter 2013-2014 issue; and November 26, 2013, for the Spring 2014 issue.

The department is now accepting advertising for all monthly 2013 issues of *Texas Highways* magazine. *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday or holiday, space and/or materials are due the preceding workday.

The rate card information for potential advertisers in the *Texas State Travel Guide,* the *Texas Highways Events Calendar, Texas Highways* magazine, and related digital assets are included in this notice. Digital assets may include TexasHighways.com.

Figure: Rates

TEXAS STATE TRAVEL GUIDE

Year 2014 Rate Base: 900,000
Space Closing: October 3, 2013
Materials Due: October 10, 2013
First Distribution: January 2014

Advertising Rates

ROP:	**Gross**	**Net***
Full Page	$23,667	$20,116
Two Thirds (2/3) Page	$16,907	$14,371
Half (1/2) Page	$14,217	$12,084
One Third (1/3) Page	$ 8,526	$ 7,247
One Sixth (1/6) Page	$ 5,376	$ 4,569
Premium Positions:	**Gross**	**Net***
Cover 2 (Inside Front)	$34,125	$29,006
Cover 3 (Inside Back)	$31,773	$27,007
Cover 4 (Back)	$42,624	$36,231
Spread (Inside Front Cover or Inside Back Cover)	$57,792	$49,123

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Early Reservation Discount: Organizations reserving their space by Friday, August 3, 2013 will receive a 5% discount off the net space price.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C:10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

2014 advertisers will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2013. Advertisers committing to ½ page or greater will also receive two free section page banners during calendar year 2014.

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2013.

TEXAS HIGHWAYS EVENTS CALENDAR

Advertising Rates/Due Dates

Year 2013/2014 Rate Base: 65,000 Circulation: Summer, Fall, Winter, Spring

Black/White	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	$ 1,512	$ 1,285	$ 1,465	$ 1,245	$ 1,418	$ 1,205
HALF PAGE	$ 1,040	$ 884	$ 1,016	$ 864	$ 968	$ 823
THIRD PAGE	$ 756	$ 643	$ 733	$ 623	$ 685	$ 582

4 Color	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
FULL PAGE	$ 2,117	$ 1,799	$ 2, 051	$ 1,743	$ 1,985	$ 1,687
HALF PAGE	$ 1,455	$ 1,237	$ 1,422	$ 1,209	$ 1,356	$ 1,153
THIRD PAGE	$ 1,058	$ 900	$ 1,025	$ 871	$ 959	$ 815

COVERS (4-Color)	1X		2X		4X	
	Gross	Net	Gross	Net	Gross	Net
COVER 2	$ 3,308	$ 2,811	$ 3,072	$ 2,611	$ 2,835	$ 2,410
COVER 3	$ 2,835	$ 2,410	$ 2,599	$ 2,209	$ 2,363	$ 2,008
COVER 4	$ 3,969	$ 3,374	$ 3,780	$ 3,213	$ 3,591	$ 3,052

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with other or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates

Issue Date	Space Closing	Materials Due
Summer 2013 (Jun, Jul, Aug-2013)	Feb. 13, 2013	Feb. 27, 2013
Fall 2013 (Sep, Oct, Nov-2013)	May 14, 2013	May 28, 2013
Winter 2013-14 (Dec-2013, Jan, Feb-2014)	Aug. 13, 2013	Aug. 26, 2013
Spring 2014 (Mar, Apr, May-2014)	Nov. 12, 2013	Nov. 26, 2013

TEXAS HIGHWAYS MAGAZINE

Texas Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$7120	$6764	$6550	$6337	$6123	$5910
2/3 Page	$5880	$5586	$5410	$5233	$5057	$4880
1/2 Page	$4626	$4395	$4256	$4117	$3978	$3840
1/3 Page	$3326	$3160	$3060	$2960	$2860	$2761
1/6 Page	$1830	$1739	$1684	$1629	$1574	$1519
Cover 2	$9100	$8645	$8372	$8099	$7826	$7553
Cover 3	$8700	$8265	$8004	$7743	$7482	$7221

Section Guides (Holiday, Product, and Destination): $1300 per insertion

Commission:	15% to recognized agencies providing print ready materials.
Payment:	Cash with order or net 30 from invoice date.
Space Deadline:	27th of the third month preceding issue date.
Materials Deadline:	Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2013 advertisers who spend a minimum of $4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2013.

GO TEXAN discount: Go Texan members receive 20 percent off the appropriate rate, based on size and frequency.

Web Site Advertising

Home page banner: $2,000/month (180 x 300 pixels) (up to 2 positions available each month)

Section page banners: $500/mo (180 x 300 pixels), $300/mo (180 x 150 pixels)

Marketplace listings: $600/year

TEXAS HIGHWAYS MAGAZINE

National Rate Card (All rates gross)

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$11,867	$11,273	$10,917	$10,562	$10,205	$9,850
2/3 Page	$9,800	$9,310	$9,016	$8,722	$8,428	$8,133
1/2 Page	$7,710	$7,325	$7,093	$6,682	$6,630	$6,400
1/3 Page	$5,543	$5,267	$5,100	$4,933	$4,767	$4,601
1/6 Page	$3,050	$2,898	$2,807	$2,715	$2,623	$2,532
Cover 2	$15,167	$14,408	$13,953	$13,498	$13,043	$12,588
Cover 3	$14,500	$13,775	$13,340	$12,905	$12,470	$12,035

Section Guides (Holiday, Product, and Destination): $2,167 per insertion

Commission: 15% to recognized agencies providing print ready materials.

Payment: Cash with order or net 30 from invoice date.

Space Deadline: 27th of the third month preceding issue date.

Materials Deadline: Seven days after space closing. When material or space Closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

2013 advertisers who spend a minimum of $4,600 gross on one order will receive a full year listing in the marketplace section of www.texashighways.com and be allowed to update the image and copy 4xs during calendar year 2013.

Web Site Advertising

Home page banner: $3,333/mo. Advertisers with 6x Full Page commitment in a 12 month period will receive 3 months of home page banners free on a first come, first served basis. (up to 2 positions available each month)

Section page banners: $700/mo (180 x 300 pixels), $400/mo (180 x 150 pixels)

Marketplace: $1,000/year

TRD-201206364
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: December 11, 2012

♦ ♦ ♦

Upper Rio Grande Workforce Development Board

Request for Applications for Accelerated ESL/GED and Occupational Training Services

PY12-RFA-206-100

Building upon Border Workforce Alliance's existing strategic collaborative efforts, the overarching goal for this initiative is to better align the components of the workforce system to accelerate credential attainment and career entry for lower-skilled adults.

This Request for Applications (RFA) invites training providers to develop and implement integrated college and accelerated career pathway models in targeted key industry sectors in the region, identified as health care, construction, transportation, distribution and logistics, and manufacturing.

Release Date: December 10, 2012

Submission Deadline: January 9, 2013, 5:00 p.m. MST

Advertisement for RFA: December 9, 2012

RFA Released: December 10, 2012, 5:00 p.m. MST

Bidders Conference: December 17, 2012, 10:00 a.m. MST

Last Day for Questions: December 21, 2012, 5:00 p.m. MST

RFA Due: January 9, 2013, 5:00 p.m. MST

Applications Evaluated: January 10, 2013, 5:00 p.m. MST

Selection of Award: January 14, 2013, 5:00 p.m. MST

Contract Negotiations: January 15-21, 2013, 5:00 p.m. MST

To ensure a fair and objective evaluation, all questions related to the RFA must be submitted in writing by fax to (915) 351-6090.

Contact Information: Workforce Solutions Upper Rio Grande, ATTN: Dr. Teofilo Ugalde, 300 E. Main, Suite 800, El Paso, Texas 79901.

TRD-201206343

Joseph Sapien

Program Administrator

Upper Rio Grande Workforce Development Board

Filed: December 10, 2012

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*